

D4OVLIN1

1 UNITED STATES DISTRICT COURT  
2 SOUTHERN DISTRICT OF NEW YORK

-----x

3 UNITED STATES OF AMERICA,

4 v.

11 CR 114 (MGC)

5 XING LIN,

6 Defendant.

JURY TRIAL

7 -----x

8 New York, N.Y.

9 April 24, 2013

10:34 a.m.

10 Before:

11 HON. MIRIAM GOLDMAN CEDARBAUM,

12 District Judge

13  
14 APPEARANCES

15 PREET BHARARA,

16 United States Attorney for the  
Southern District of New York

17 PETER M. SKINNER

JENNIFER E. BURNS

18 Assistant United States Attorneys

19 JOEL S. COHEN

Attorney for Defendant

20 ALSO PRESENT: BRENDA CHEN, Fuchow Interpreter

21 DANIEL YANG, Fuchow Interpreter

LILY LAU, Fuchow Interpreter

22 DANIEL CHAN, Fuchow Interpreter

JESSICA CHACE, Paralegal

23 TIMOTHY VARIAN, Special Agent, HSI

24 JIAYING WANG, Legal Assistant

D4OVLIN1

1 (Trial resumed)

2 (In open court; jury not present)

3 THE COURT: Good morning.

4 Please be seated. Let's get the jury.

5 MR. COHEN: Your Honor, I have a motion.

6 THE COURT: Yes.

7 MR. COHEN: I indicated yesterday at the close of the  
8 day that I would move for a mistrial this morning after I had  
9 an opportunity to review in writing the government's rebuttal  
10 summation.

11 I now make that motion for the reasons I'm about to  
12 state, and because of my belief that the government's summation  
13 amounted to, in essence, an *ad hominem* attack on defense  
14 counsel, and, for that and other reasons, deprived Mr. Lin of  
15 his right to a fair trial. And I just want to review very  
16 briefly the items that Mr. Skinner mentioned during his  
17 rebuttal that I think cumulatively add up to this deprivation.

18 Initially, he indicated that -- on Page 999, he  
19 stated: "He's not saying that they were mistaken, he's saying  
20 that they lied. Seriously, that's what he's saying. The  
21 audacity of this defense."

22 I objected; your Honor sustained that objection.

23 In two further sentences later, he says: "Let's take  
24 a hard look at this alternative universe," suggesting that my  
25 summation came out of the twilight zone.

D4OVLIN1

1 I objected to that; there was no ruling.

2 A couple pages later, on Page 1003, at Line 15, he  
3 stated: "Is defense really saying that in the wake of this  
4 horrific murder, these three people came together and decided  
5 to frame Xing Lin because they thought -- "

6 And I objected because I had not suggested during my  
7 summation that they had come together to create a frame, and I  
8 thought it was improper.

9 You just said to move on.

10 Most egregious, I think, was that during the charge  
11 conference, your Honor specifically made a finding that Dong  
12 Jai, Cash, was not a witness that was available to both sides,  
13 and that your Honor would not charge as such.

14 THE COURT: Equally available witnesses.

15 MR. COHEN: Right.

16 And despite your Honor's very clear instruction that  
17 was the case, Mr. Skinner said at Page 1005: "It's our burden;  
18 he doesn't need to do anything. That said, he knows where Cash  
19 is.

20 "Objection.

21 "The defense attorney said --

22 "Objection.

23 "The defense in this case has repeatedly suggested  
24 that everybody in Chinatown knows where Cash is."

25 And your Honor said: "Just a moment. Move on to

D4OVLIN1

1 something else."

2 THE COURT: Well, I denied the application to include  
3 in the charge equally available.

4 MR. COHEN: But, your Honor, I don't think that  
5 it's -- first of all, that's burden-shifting for him to suggest  
6 that I had to call any witness, much less a witness that your  
7 Honor indicated was not a witness available equally to both  
8 sides.

9 And because of the burden-shifting aspect of it and  
10 because your Honor made a finding that he wasn't equally  
11 available to both sides, I don't see how the government gets to  
12 stand up and says that he is equally available to both sides.  
13 It's not fair.

14 Moreover, after I specifically said, specifically said  
15 that the prosecutors, the agents in this case, had not gotten  
16 together to frame anybody, had not done anything underhanded,  
17 had not done anything improper, and that they had been sold a  
18 bill of goods by their witnesses, Mr. Skinner said: "Mr. Cohen  
19 is a nice guy; he doesn't want to openly accuse the people at  
20 the front table of fabricating the case. He went out of his  
21 way to say he didn't think that we made any promises to any of  
22 these witnesses. But isn't he really saying that the front  
23 table was a part of this?

24 "Objection.

25 "That we're relying --

D4OVLIN1

"Objection.

"That we're relying --

"I've heard your objection."

A few lines later: "What did the agents and prosecutors in this case have to motivate them to suborn perjury, to risk their careers?

"Objection."

Your Honor indicated that we shouldn't do much objecting during closings, and I agreed with you. But I felt that what was being said was so egregious, that it needed to be addressed promptly.

He then vouched for those witnesses --

THE COURT: Well, you have certainly preserved your objections.

MR. COHEN: I understand.

He then vouched for his witnesses by stating that they had testified truthfully.

Moreover, on Page 1007 at Line 18, Mr. Skinner said: "If it's all a lie, how does the defendant explain the evidence that couldn't have been fabricated? How does he explain his car at the scene? How does he explain his documents?

"Burden shifting, your Honor. Objection.

"I think you should move on to something else."

On Page 1009 --

THE COURT: Well, I intend to tell the jury very

D4OVLIN1

1 clearly who has the burden of proof. I think that that will  
2 cure a lot of your objections.

3 MR. COHEN: Well, Judge --

4 THE COURT: But, in any event, I hear what you are  
5 telling me, and I reserve decision.

6 MR. COHEN: There's just one or two things I want to  
7 add, if I may.

8 THE COURT: Very well.

9 MR. COHEN: At Page 1015: "First, keep in mind that  
10 dailo/follower relationship. The dailo is on top; he tells the  
11 followers what to do."

12 Me: "Judge, this is improper rebuttal. I'm sorry,  
13 it's just improper rebuttal."

14 On Page 1018, he makes reference to Oh-Yang and why he  
15 asked -- why Mr. Lin asked Oh-Yang to go back and get the car.

16 "Evidence that's corroborated by independent phone  
17 records."

18 I again say: "Judge, again, I never mentioned Oh-Yang  
19 during my summation; I don't see how this is proper rebuttal,  
20 I'm sorry."

21 Your Honor says: "I think that that was not. We're  
22 going to strike that. Not for that reason, because of the  
23 absence of evidence as to what happened."

24 I think, Judge, that all of those things viewed  
25 together did deprive Mr. Lin of his Sixth Amendment right to a

D4OVLIN1

1 fair trial. I think if your Honor is reserving decision on the  
2 mistrial motion and intends to take care of this by instructing  
3 the jury that what the lawyers say is not evidence, that your  
4 Honor should make some specific references to what Mr. --

5 THE COURT: I understand that's your view.

6 MR. COHEN: I'm sorry, your Honor?

7 THE COURT: Off the record.

8 (Off record)

9 MR. COHEN: And finally, Judge, if the Court declines  
10 to make specific instructions to the jury on these things, and  
11 declines to at this time grant a mistrial motion, then I would  
12 ask for five minutes surrebuttal.

13 THE COURT: I'm sorry, that I deny.

14 MR. COHEN: Fine.

15 THE COURT: That I deny.

16 Let's get the jury.

17 (Jury present)

18 THE COURT: Good morning, members of the jury.

19 We are now at the stage of the trial at which you  
20 undertake your final function as jurors. And here you perform  
21 one of the most sacred obligations of citizenship, which is to  
22 decide the questions of fact in this case.

23 You are to discharge this final duty in an attitude of  
24 complete fairness and impartiality. And, as I emphasized when  
25 you were selected as jurors, you must have no bias or prejudice

D4OVLIN1

Charge

1 for or against the government or the defendant.

2 This case is important. It is important to the  
3 defendant, who is charged with serious crimes. It is equally  
4 important to the government for the enforcement of the criminal  
5 law is a matter of prime concern to the community.

6 Let me add, the fact that the government is a party  
7 entitles it to no greater consideration than that accorded to  
8 any other party to a litigation. By the same token, it is  
9 entitled to no less consideration.

10 I told you at the very start of the trial that your  
11 principal function during the taking of testimony and admission  
12 of evidence would be to listen carefully to the evidence and  
13 observe each witness who testifies. It has been obvious to me  
14 that you have faithfully discharged this duty. Your interest  
15 never flagged, and you followed the evidence with close  
16 attention. I ask you to give me the same careful attention as  
17 I instruct you on the law.

18 You are the sole and exclusive judges of the facts.  
19 You determine the weight of the evidence. You appraise the  
20 credibility of the witnesses. You draw the reasonable  
21 inferences from the evidence. And you resolve such conflicts  
22 as there may be in the evidence.

23 You have now heard all of the evidence in the case, as  
24 well as the final arguments of the lawyers. As I've already  
25 told you, anything that counsel either for the government or



D4OVLIN1

Charge

1 defense may have said with respect to matters in evidence,  
2 whether during the trial, in a question, in argument, or in  
3 closing arguments, is not to be substituted for your own  
4 recollection of the evidence. So too anything that I may have  
5 said during the trial or may refer to during the course of  
6 these instructions as to any matter in evidence is not to be  
7 taken in place of your own independent recollection. You, and  
8 you alone, are the judges of the facts. And my duty is to  
9 instruct you on the law. It is your duty to accept these  
10 instructions of law, and apply them to the facts as you  
11 determine them. The result will be the verdict.

12 You must accept the law as I give it to you. If any  
13 attorney has stated a legal principle different from any that I  
14 state in my instructions, it is my instructions that you must  
15 follow. Needless to say, a personal view of any of the lawyers  
16 in this case is entirely irrelevant and would be and should be  
17 totally disregarded. But you should not single out any one  
18 instruction as alone stating the law. You should consider my  
19 instructions as a whole when you retire to deliberate in the  
20 jury room. It is not your function to consider the wisdom of  
21 any rule that I state, regardless of any opinion that you may  
22 have as to what the law is or what the law ought to be. It  
23 would violate your sworn duty to have based a verdict upon any  
24 other view of the law than that which I give you.

25 At the beginning of the trial, I referred to certain

D4OVLIN1

Charge

1 principles of law which apply in every criminal case. I repeat  
2 those principles now. I remind you that the indictment, any  
3 indictment, is not evidence. An indictment is no more than a  
4 formal method of accusing a person of having committed a crime.  
5 You must give no weight whatsoever to the fact that an  
6 indictment has been returned against the defendant.

7 The defendant has pleaded not guilty. In doing so, he  
8 denies each and every allegation against him. That means that  
9 the government has the burden of proving the charges against  
10 the defendant beyond a reasonable doubt. This burden never  
11 shifts; it remains on the government throughout the entire  
12 trial.

13 Under our system of law, the defendant is presumed to  
14 be innocent of the charges against him. This presumption of  
15 innocence was in the defendant's favor at the start of the  
16 trial, continued in the defendant's favor throughout the entire  
17 trial, is in the defendant's favor even as I instruct you now,  
18 and remains in the defendant's favor during the course of your  
19 deliberations in the jury room. It is removed only if and when  
20 you are satisfied that the government has sustained its burden  
21 of proving the guilt of the defendant beyond a reasonable  
22 doubt.

23 What is a reasonable doubt? The words almost define  
24 themselves. It is a doubt based on reason and common sense and  
25 arising from the evidence, or lack of evidence. It is a doubt

D4OVLIN1

Charge

1 that a reasonable person would have after carefully weighing  
2 all of the evidence. It is a doubt that would cause a  
3 reasonable person to hesitate to act in a manner of importance  
4 in his or her personal life. Proof beyond a reasonable doubt  
5 must, therefore, be proof of such a convincing character, that  
6 a reasonable person would not hesitate to rely and act upon it  
7 in the most important of his or her own affairs.

8 A reasonable doubt is not a caprice or a whim, it is  
9 not a speculation or suspicion. It is not an excuse to avoid  
10 the performance of an unpleasant duty. And it is not sympathy.  
11 In a criminal case, the burden is at all times upon the  
12 government to prove guilt beyond a reasonable doubt. The test  
13 is reasonable doubt. Proof beyond a reasonable doubt is  
14 sufficient to convict.

15 If, after fair and impartial consideration of all the  
16 evidence, you have a reasonable doubt about the guilt of the  
17 defendant based on the evidence or lack of evidence presented  
18 during the trial, you must acquit.

19 On the other hand, if, after fair and impartial  
20 consideration of all the evidence, you are satisfied of the  
21 guilt of the defendant beyond a reasonable doubt, you should  
22 vote to convict the defendant.

23 I should note, each of the five counts in the  
24 indictment charges a separate crime, and you must consider each  
25 count separately.

D4OVLIN1

Charge

1 Count One charges the defendant with conspiring to  
2 violate the federal racketeering statute, commonly known as  
3 RICO. This means that the defendant has been charged with  
4 conspiracy to conduct or participate in the affairs of an  
5 enterprise through a pattern of racketeering activity.

6 Count Two charges that the defendant participated in  
7 the conduct of an enterprise through a pattern of racketeering  
8 activity, specifically, murder, conspiracy to commit murder,  
9 extortion, extortion conspiracy, and operating illegal gambling  
10 businesses.

11 Count Three charges the defendant with murder, and  
12 aiding and abetting the murder of Chan Qin Zhou and Mei Ying Li  
13 by using a firearm during and in relation to extortion and  
14 conspiracy to commit extortion.

15 Count Four charges the defendant with extortion of the  
16 owners of a bus company.

17 Count Five charges the defendant with conspiring to  
18 extort the owners of a bus company.

19 I should note that the indictment alleges that the  
20 defendant had a nickname, Ding Pa. Use of a nickname is not  
21 evidence of criminal activity.

22 Even though extortion and conspiracy to commit  
23 extortion are charged in the last two counts of the indictment,  
24 Counts Four and Five, I am going to begin by explaining those  
25 charges first. This is because the law of extortion is also

D4OVLIN1

Charge

1 relevant to the crimes charged in Counts One, Two, and Three.

2 Extortion is a violation of the Hobbs Act, which is  
3 Section 1951 of the criminal code. That statute provides as  
4 relevant here whoever in any way or degree obstructs, delays,  
5 or affects commerce for the movement of any article or  
6 commodity in commerce by extortion or attempts to do so is  
7 guilty of a crime. Extortion is defined as obtaining another  
8 person's property or money with his consent when the consent is  
9 induced through the wrongful use or threatened use of force,  
10 violence, or fear.

11 Count Four reads as follows:

12 "From in or about March 2002, up to and including in  
13 or about December 2009, in the Southern District of New York  
14 and elsewhere, Xing Lin, also known as Ding Pa, the defendant,  
15 and others, known and unknown, willfully and knowingly did  
16 commit and attempt to commit extortion as that term is defined  
17 in Title 18, which is the United States Criminal Code, Section  
18 1951(b)(2), by obtaining money and property from and with the  
19 consent of another person, to wit, individuals who owned a bus  
20 company, which consent would have been and was induced by the  
21 wrongful use of actual and threatened force, violence, and  
22 fear, and thereby did obstruct, delay, and affect commerce, and  
23 the movement of articles and commodities in commerce as that  
24 term is defined in Title 18, which is the criminal code of the  
25 United States, Section 1951(b)(3); to wit, it is charged that

D4OVLIN1

Charge

1 Lin extorted and attempted to extort individuals who owned a  
2 bus company for money, that is, extort for money of individuals  
3 who owned a bus company."

4 I should note the following about extortion:

5 Extortion is a violation of the Hobbs Act, which, as  
6 I've told you, is Section 1951 of the United States Criminal  
7 Code. That statute provides as relevant here, and I quote:

8 "Whoever in any way or degree obstructs, delays, or  
9 affects commerce or the movement of any article or commodity in  
10 commerce by extortion or attempts so to do is guilty of a  
11 crime."

12 Extortion is defined as obtaining another person's  
13 property or money with his consent when the consent is induced  
14 through the wrongful use or threatened use of force, violence,  
15 or fear.

16 Count Four reads as follows:

17 "From in or about March 2002, up to and including in  
18 or about December 2009, in the Southern District of New York  
19 and elsewhere, Xing Lin, also known as Ding Pa, the defendant,  
20 and others, known and unknown, willfully and knowingly did  
21 commit and attempt to commit extortion by obtaining money and  
22 property with the consent of another person, to wit,  
23 individuals who owned a bus company, which consent would have  
24 been and was induced by the wrongful use of actual and  
25 threatened force, violence, and fear, and thereby did obstruct,

D4OVLIN1

Charge

1 delay, and affect commerce and the movement of articles and  
2 commodities in commerce as that term is defined in Section  
3 1951(b)(3) of the United States Criminal Code; to wit, Lin  
4 extorted and attempted to extort individuals who owned a bus  
5 company." That is, Lin extorted and attempted to extort money  
6 from individuals who owned a bus company.

7 In order to find that the defendant committed  
8 extortion, you must find that the government has proved beyond  
9 a reasonable doubt all of the following four elements:

10 First, that the defendant obtained money or property  
11 from another person with that person's consent; second, that  
12 the defendant induced that person's consent by the wrongful use  
13 or threat of force, violence, or fear; third, that interstate  
14 commerce was delayed, obstructed, or affected; and, fourth,  
15 that the defendant acted knowingly and willfully.

16 The first element the government must prove and that  
17 you must find for the charge that the defendant committed  
18 extortion is proof beyond a reasonable doubt that the defendant  
19 knowingly obtained money or property from another person with  
20 that person's consent. The term "property" includes money, as  
21 well as tangible and intangible things of value.

22 Now, if and only if you find that the defendant  
23 obtained money or property from another person, with that  
24 person's consent, you must then determine whether the defendant  
25 obtained the money or property through the wrongful use of

D4OVLIN1

Charge

1 actual or threatened force, violence, or fear of physical  
2 injury or economic harm. You must determine whether the  
3 defendant obtained the money or property by using any of those  
4 unlawful means. It is not necessary that the government prove  
5 that force, violence, and fear were all threatened or used.  
6 The government satisfies its burden if it proves beyond a  
7 reasonable doubt that any of these methods were threatened or  
8 used.

9 You should give the words "actual or threatened force,  
10 violence, or fear" their common and ordinary meaning. A threat  
11 may be either implicit or explicit. The force or violence  
12 might be aimed at a third person or at causing economic rather  
13 than physical harm.

14 In determining whether the defendant used fear to  
15 obtain money or property, you must determine whether a victim  
16 experienced anxiety, concern, or worry over expected personal  
17 harm or economic loss. These are matters which require you to  
18 consider the victim's state of mind at the time of the  
19 defendant's actions. It is, as with other matters, involving  
20 state of mind. You cannot look inside a person's mind. But a  
21 careful consideration of the circumstances should enable you to  
22 decide whether fear was the victim's state of mind. Fear need  
23 not be a consequence of an implicit or explicit threat. The  
24 wrongful use of fear requires that the defendant create or  
25 instill fear, or use or exploit existing fear with the specific



D4OVLIN1

Charge

1 purpose of inducing another to part with property.

2 The government must prove beyond a reasonable doubt  
3 that the defendant was aware of a victim's fear, and did or  
4 said something to wrongfully exploit that fear. If you decide  
5 that the defendant obtained money or property by the wrongful  
6 use of actual or threatened force, violence, or fear, you must  
7 then decide whether in doing so the defendant affected  
8 interstate commerce.

9 Interstate commerce means commerce between two or more  
10 states, such as the movement of goods, services, or money from  
11 one state to another. It's not necessary to find that the  
12 effect on interstate commerce was substantial, nor is it  
13 necessary to find that the effect on interstate commerce was  
14 adverse. A minimal effect is sufficient, so long as the  
15 activities of the defendant affected interstate commerce in  
16 some way. If you decide that there was any effect on  
17 interstate commerce, that is enough to satisfy this element.  
18 It is not necessary to find that the defendant knew that his  
19 acts would affect interstate commerce or that he intended to  
20 affect such commerce.

21 Finally, in order to find the defendant guilty of  
22 Count Four of the indictment, you must find that the defendant  
23 acted knowingly and willfully with respect to the first and  
24 second elements. "Knowingly" means to act voluntarily and  
25 deliberately, rather than mistakenly or inadvertently or

D4OVLIN1

Charge

1 accidentally. A person acts willfully who acts with the intent  
2 to do something that the law forbids, that is, with a bad  
3 purpose, to violate or deliberately disregard the law. To act  
4 willfully, a defendant need not know that he is breaking any  
5 particular law; he needs only to be aware of the generally  
6 unlawful nature of his conduct.

7 Knowledge and intent exist in the mind. And again,  
8 since it is not possible to look inside a person's mind, the  
9 only way to arrive at a decision on knowledge and intent is for  
10 you to take into consideration all of the facts and  
11 circumstances shown by the evidence.

12 Count Five of the indictment charges conspiracy to  
13 commit extortion. Conspiring to commit extortion is also a  
14 violation of the Hobbs Act, Section 1951 of the criminal code  
15 of the United States. That statute provides as relevant  
16 whoever in any way or degree obstructs, delays, or affects  
17 commerce, or the movement of any article or commodity in  
18 commerce, by conspiring to do extortion is guilty of a crime.

19 Before I instruct you on the elements of a conspiracy  
20 to violate the extortion statute, let me say a few words about  
21 the difference between the conspiracy charged in Count Five,  
22 and the extortion charged in Count Four on which I have just  
23 instructed you.

24 The crime of conspiracy is separate and distinct from  
25 the actual violation of the law, which the law refers to as a

D4OVLIN1

Charge

1 substantive crime, the actual violation. Count Four charges a  
2 substantive violation of the extortion statute; that is, it  
3 charges that the defendant actually committed extortion. Count  
4 Five charges the defendant with a different crime; that is, it  
5 charges him with conspiring or agreeing to commit extortion.

6 A conspiracy is a kind of criminal partnership, an  
7 agreement, of two or more persons who join together to commit  
8 one or more crimes. You may find the defendant guilty of the  
9 crime of conspiracy even if the conspiracy was not actually --  
10 the object of the conspiracy was not actually committed, that  
11 is, if the conspiracy was not successful.

12 Congress has deemed it appropriate to make conspiracy  
13 standing alone a separate crime, even if the conspiracy is not  
14 successful. In order to find that the defendant was a member  
15 of the conspiracy charged in Count Five, you must find that the  
16 government has proved beyond a reasonable doubt both of the  
17 following two elements:

18 First, that at some time during the period alleged in  
19 the indictment, the defendant entered into an agreement with at  
20 least one other person to violate the federal extortion  
21 statute; and, second, that the defendant unlawfully, knowingly,  
22 and willfully participated in that agreement.

23 The first element that the government must prove  
24 beyond a reasonable doubt is that at some time during the  
25 period of March 2002 to December 2009, the defendant and at

D4OVLIN1

Charge

1 least one other person entered into the unlawful agreement  
2 charged in Count Five of the indictment. In order for the  
3 government to satisfy this element, you need not find that the  
4 agreement or its object was written down or expressed in  
5 specific words.

6 The government is not required to show that two or  
7 more people sat around a table and entered into a solemn pact  
8 orally or in writing, stating that they had formed a conspiracy  
9 to violate the law and spelling out all of the details. But  
10 the government must show that the conspirators came to a mutual  
11 understanding to commit extortion by means of a joint plan.

12 In a very real sense, in the context of conspiracy  
13 cases, actions often speak louder than words. If, upon  
14 consideration of all the evidence, you find beyond a reasonable  
15 doubt that the defendant agreed to work with at least one other  
16 person in furtherance of the object charged in the indictment  
17 in Count Five, then proof of the existence of a conspiracy is  
18 established.

19 According to the indictment, the object of the  
20 conspiracy charged in Count Five was to commit extortion. I  
21 have just explained to you the elements of extortion. If you  
22 find that the defendant and at least one other person agreed to  
23 accomplish that object, the unlawful purpose element will be  
24 satisfied.

25 The second element that the government must prove

D4OVLIN1

Charge

1 beyond a reasonable doubt in order to prove Count Five of the  
2 indictment is that the defendant unlawfully, knowingly, and  
3 willfully, participated in a conspiracy with at least one other  
4 person.

5 I've already explained what it means to act knowingly  
6 and willfully, and that knowledge and intent exists in the  
7 mind. Again, it is not possible to look inside a person's  
8 mind. So the only way to arrive at a decision on knowledge and  
9 intent is for you to take all of the facts and circumstances  
10 shown by the evidence into consideration. But I want to  
11 caution you that mere knowledge or acquiescence without  
12 participation in the unlawful agreement is not sufficient. A  
13 defendant's mere presence at the scene of the alleged crime  
14 does not make him a member of the conspiracy charged.

15 I turn back then to Count Two of the indictment,  
16 rather than Count One, because I think it will be easier to  
17 understand both Count Two and Count One if we start with Count  
18 Two.

19 In Count Two of the indictment, the defendant is  
20 charged with violating the Racketeer-Influenced and Corrupt  
21 Organization Act, which is commonly known as RICO, R-I-C-O, a  
22 statute which is found at Section 1962(c) of the United States  
23 Criminal Code. That statute provides, in pertinent part, and I  
24 quote:

25 "It shall be unlawful for any person employed by or

D4OVLIN1

Charge

1 associated with any enterprise engaged in or the activities  
2 which affect interstate or foreign commerce to conduct or  
3 participate directly or indirectly in the conduct of such  
4 enterprise's affairs through a pattern of racketeering  
5 activity."

6 Count Two of the indictment -- well, initially, let me  
7 say that the phrase "racketeering activity" is specifically  
8 defined by Congress in the RICO statute to mean certain  
9 criminal acts, and is not to be thought of as you might in an  
10 everyday context. Consequently, you must put aside any  
11 preconceived ideas about the phrase "racketeering activities"  
12 in your deliberations, and concentrate only on its meaning in  
13 this statute.

14 And the racketeering activities that are charged in  
15 this case are set out in Count Two of the indictment.

16 Count Two of the indictment charges that: At all  
17 times relevant to this indictment, Xing Lin, also known as Ding  
18 Pa, the defendant, and others, known and unknown, were members  
19 and associates of an organized crime enterprise led by Lin.  
20 The Ding Pa Organization engaged in crimes including murder,  
21 manslaughter, assault, operating illegal gambling businesses,  
22 extortion, and other crimes.

23 The Ding Pa Organization constituted an enterprise as  
24 that term is defined in Section 1961, Sub 4, of Title 18 of the  
25 United States Code. That is, a group of individuals associated

D4OVLIN1

Charge

1 in fact. The enterprise was engaged in and its activities  
2 affected interstate commerce. The Ding Pa Organization was an  
3 organized criminal group based primarily in the Chinatown  
4 section of Manhattan that operated in the Southern and Eastern  
5 District of New York and elsewhere. This is the charge in the  
6 indictment. The Ding Pa Organization constituted an ongoing  
7 organization whose members functioned as a continuing unit for  
8 a common purpose of achieving the objectives of the exercise.  
9 This enterprise was engaged in and its activities affected  
10 interstate commerce.

11 This is a long count.

12 It is alleged in the indictment, in Count Two, that  
13 Xing Lin, also known as Ding Pa, was a member and associate of  
14 the enterprise which the government calls Ding Pa Organization,  
15 and was, at various times relevant to the indictment, the  
16 leader of the organization. In that capacity, Lin participated  
17 in the operation and management of the enterprise, and  
18 participated in unlawful and other activities in furtherance of  
19 the conduct of the enterprise's affairs, and profited from the  
20 enterprise's affairs.

21 Count Two also charges that the purposes of the  
22 enterprise included enriching the leaders, members, and  
23 associates in the Ding Pa Organization through criminal  
24 activities, preserving, protecting and augmenting the power,  
25 territory, and financial profits of the Ding Pa Organization,

D4OVLIN1

Charge

1 its leaders, members, and associates, through the use of  
2 intimidation, violence, and threats of physical and economic  
3 harm, and keeping victims and citizens in fear of the Ding Pa  
4 Organization, its leaders, members, and associates, by  
5 committing and threatening to commit physical violence, and by  
6 causing and threatening to cause physical and economic harm.

7 The racketeering acts set out in Count Two of the  
8 indictment, murder and conspiracy to commit murder, that is  
9 charged as Racketeering Act 1.

10 Racketeering Act 2 is charged as follows:

11 From in or about March 2002, up to and including in or  
12 about December 9th, 2009, Ding Pa, the defendant, and others,  
13 known and unknown, willfully and knowingly combined, conspired,  
14 and agreed together to commit extortion, as that term is  
15 defined in the United States Criminal Code, by obtaining money  
16 and property from and with the consent of other persons, to  
17 wit, individuals who owned and operated a bus company.

18 Racketeering Act 3 is charged as follows:

19 In or about 1996, in the Southern District of New York  
20 and elsewhere, Xing Lin, also known as Ding Pa, the defendant,  
21 and others, known and unknown, willfully and knowingly did  
22 conduct, finance, manage, supervise, direct, and own all and  
23 part of an illegal gambling business, to wit, a mahjong parlor,  
24 in violation of New York State Penal Law, and which business  
25 involved five and more persons who conducted, financed,



D4OVLIN1

Charge

1 managed, supervised, directed, and owned all and part of it,  
2 and which business had been and remained in substantially  
3 continuous operation for a period in excess of 30 days, and had  
4 gross revenues of \$2,000 in a single day, all in violation of  
5 Section 1955 of the United States Criminal Code.

6 Racketeering Act 4, which is charged in Count Two of  
7 the indictment, charges that:

8 From in or about 1996, up to and including in or about  
9 1997, Xing Lin, also known as Ding Pa, willfully and knowingly  
10 did conduct, finance, manage, supervise, direct, and own an  
11 illegal gambling business, to wit, a gambling parlor where tien  
12 len and other card games were played, in violation of New York  
13 State Penal Law, and which business involved five and more  
14 persons who conducted, financed, managed, supervised, directed,  
15 and owned, all and part of it, which had been and remained in  
16 substantially continuous business -- excuse me, continuous  
17 operation for a period in excess of 30 days, and had gross  
18 revenues of \$2,000 in a single day.

19 Now, there is a fifth racketeering act charged in  
20 Count Two of the indictment as part of the activities of the  
21 RICO enterprise, that from in or about 1999, up to and  
22 including in or about 2002, the defendant, Ding Pa, willfully  
23 and knowingly did conduct, finance, manage, supervise, direct  
24 and own, all and part of an illegal gambling business, to wit,  
25 a gambling parlor where tien len and other card games were

D4OVLIN1

Charge

1 played, in violation of New York State law, and which business  
2 involved five and more persons who conducted, financed, etc.,  
3 all and part of the business, and which business had been and  
4 remained in substantially continuous operation for a period in  
5 excess of 30 days, and had gross revenues of \$2,000 in a single  
6 day, in violation of Title 19 of the United States Code,  
7 Section -- excuse me -- Section 1955 of the United States  
8 Criminal Code.

9 Now, in order to prove the defendant guilty of the  
10 crime charged in Count Two, the government must establish  
11 beyond a reasonable doubt each of the following five elements:

12 First, that on or about the dates charged in the  
13 indictment, the enterprise alleged in the indictment existed.

14 Second, that the enterprise affected interstate  
15 commerce.

16 Third, that the defendant was employed by or  
17 associated with that enterprise.

18 Fourth, that the defendant engaged in a pattern of  
19 racketeering activity.

20 And, fifth, that the defendant conducted or  
21 participated in the conduct of the enterprise through that  
22 pattern of racketeering activity.

23 The first element that the government must establish  
24 beyond a reasonable doubt is the existence of the enterprise  
25 charged in the indictment.

D4OVLIN1

Charge

1           An enterprise within the meaning of the RICO law does  
2 not have to be a legal entity, such as a partnership, a  
3 corporation, or an association. Under RICO, an enterprise can  
4 be a group of people who informally associate together for the  
5 common purpose of engaging in a course of conduct.

6           In addition to having a common purpose, this group of  
7 people must have an ongoing organization, either formal or  
8 informal, and it must have a core of personnel who function as  
9 a continuing unit. This group may be organized for a  
10 legitimate and lawful purpose or for an unlawful purpose.

11           Here, in this case, or so the indictment alleges, the  
12 enterprise charged to have existed is what the government calls  
13 the Ding Pa Organization. Just because the indictment charges  
14 that the Ding Pa Organization was an enterprise, does not  
15 establish that there was an enterprise within the meaning of  
16 the law. That is for you to decide.

17           The first question that confronts you is has the  
18 government proven beyond a reasonable doubt that the enterprise  
19 charged in the indictment existed, that there was such an  
20 enterprise. In essence, the government contends that a group  
21 of individuals which it calls the Ding Pa Organization  
22 associated together in order to make money and achieve other  
23 objectives through a pattern of racketeering. If you find that  
24 there was, in fact, a group of people characterized by, one, a  
25 common purpose, two, an ongoing formal or informal organization

D4OVLIN1

Charge

1 or structure, and, three, core personnel who functioned as a  
2 continuing unit, then you may find that an enterprise existed.

3 (Continued on next page)

D4o6lin2

Charge

1           THE COURT: If you find that the enterprise charged in  
2 the indictment existed, you must also determine whether this  
3 enterprise continued in essentially unchanged form during  
4 substantially the period charge in the indictment. This does  
5 not mean that everyone involved has to be the same.  
6 Essentially the core of the enterprise has to have been the  
7 same throughout.

8           In sum, your first task is to determine whether the  
9 government has established beyond a reasonable doubt that,  
10 first, the existence of the he price charged in the indictment.  
11 If your answer to that question is yes, then you will proceed  
12 to consider the other elements of Count Two. If your answer is  
13 no, that is to say if you have a reasonable doubt about the  
14 existence of the enterprise charged in Count Two, then you must  
15 acquit the defendant on this charge. The second element that  
16 the government must prove beyond a reasonable doubt is that the  
17 activities of the enterprise had some affect on interstate  
18 commerce. I have already discussed what it means to have an  
19 affect on interstate commerce in connection with Count Four and  
20 you should apply those instructions here as well.

21           Now, if you conclude that the existence of the  
22 enterprise and the affect on interstate commerce has been  
23 established beyond a reasonable doubt, your next task will be  
24 to determine whether the government has proved beyond a  
25 reasonable doubt that the defendant was associated with that

D4o6lin2

Charge

1 enterprise.

2 Now, for Count Two, the fourth element that the  
3 government must prove beyond a reasonable doubt is that the  
4 defendant engaged in a pattern of racketeering activity. A  
5 defendant engages in a pattern of racketeering activity if he  
6 commits at least two acts of racketeering within 10 years of  
7 each other and the two acts are sufficiently related to  
8 continue in criminal activity of the enterprise to constitute a  
9 pattern. A RICO pattern may not be established without some  
10 showing that the racketeering acts are interrelated and that  
11 there is continuity or a threat of continuity in the activities  
12 of the organization.

13 It is important to note that isolated acts of  
14 racketeering do not form a pattern. A pattern is an  
15 arrangement or order of things or activity. It is not the  
16 number of acts, but the relationship that they bear to each  
17 other or to some external organizing principle that renders  
18 them ordered or arranged.

19 Criminal conduct forms a pattern only if it embraces  
20 acts of racketeering that have the same or similar purposes or  
21 results and participants and victims or methods of commission  
22 that show a relationship between the acts of racketeering. The  
23 the racketeering acts must be interrelated. The acts of  
24 racketeering must also be a part of a continuing course of  
25 conduct where the enterprise is an entity whose business is

D4o6lin2

Charge

1 racketeering activity. An act performed in furtherance of that  
2 business automatically carries with it the threat of continued  
3 racketeering activities. If and only if you find that the  
4 defendant committed at least two acts of racketeering, which  
5 were part of such related and continuing criminal activity,  
6 then you may find that the the government has proved that the  
7 defendant engaged in a pattern of racketeering activity.

8 Further, it is not enough that all of you believe that  
9 the defendant engaged in a pattern of racketeering activity by  
10 committing at least two acts of racketeering. You may not find  
11 the defendant guilty unless all of you agree that he engaged in  
12 a pattern of racketeering activity by committing at least two  
13 particular acts of racketeering. That is, you may not find the  
14 defendant guilty if some of you think that only Acts  
15 Racketeering One and Two were committed by the defendant and  
16 the rest of you think that Acts Three and Four were committed  
17 by the defendant. There must be at least two specific acts of  
18 racketeering that all of you agree were committed by the  
19 defendant in order to find that the defendant engaged in a  
20 pattern of racketeering activity.

21 I will instruct you on the specific racketeering acts  
22 charged in the indictment in a moment, but before I do that I  
23 will turn to the fifth and final element of the substantive  
24 RICO charge which is Count Two of the indictment. If you find  
25 that the defendant engaged in a pattern of racketeering

D4o6lin2

Charge

1 activity, then you must consider the fifth and final element of  
2 the RICO offense charged in Count Two. The government must  
3 prove beyond a reasonable doubt that the defendant conducted or  
4 participated in the conduct of the enterprise through that  
5 pattern of racketeering activity. In other words, it is not  
6 enough that there be an enterprise and that the defendant  
7 engaged in a pattern of racketeering activities. More is  
8 required. To conduct or participate in the conduct of the  
9 enterprise means that the defendant must have played some part  
10 in the operation or management of the enterprise.

11 The government must also prove that there is a  
12 meaningful connection between the defendant's charged acts of  
13 racketeering and the enterprise. The government must prove  
14 that the acts of racketeering were in some way related to the  
15 affairs of the enterprise or that the defendant was able to  
16 commit these acts solely by virtue of his position or  
17 involvement in the affairs of the enterprise.

18 I will now review with you the six specific acts of  
19 racketeering which are charged in Count Two of the indictment.  
20 You need only find that the defendant committed one of the  
21 crimes charged within a single racketeering act in the  
22 indictment in order to find the entire racketeering act proved.  
23 However, I remind you that you must all agree on which  
24 particular crime the defendant committed in order to find that  
25 he committed the racketeering act. Again, if some of you find



D4o6lin2

Charge

1 one part and the others of you find another part, you are not  
2 all finding the same act and you may not find the defendant  
3 guilty under those circumstances.

4 Now, the first racketeering act, Racketeering Act One  
5 in the indictment charges the defendant with murdering and  
6 conspiring to murder change Chan Qin Zhou on or about July  
7 10th, 2004 in violation of New York State law. As I just  
8 instructed you, the violation of any one of the charged  
9 statutes alone constitutes the commission of Racketeering Act  
10 One. Under New York State Penal Law 125.25, a person is guilty  
11 of murder in the second degree when with intent to cause the  
12 death of another person he causes the death of such person or  
13 of a third person. In order to find that the defendant  
14 committed this charge of murder, the government must prove  
15 beyond a reasonable doubt both of the following two elements:  
16 First, that on or about July 30th, 2004, the defendant caused  
17 the death of Chan Qin Zhou, and second that the defendant did  
18 so with the intent to cause the death of Chan Qin Zhou.

19 Now, the term "intent" under New York law means  
20 conscious objective or purpose. Thus, a person acts with  
21 intent to cause the death of another when that person's  
22 conscious objective or purpose is to cause the death of  
23 another. Under New York State Penal Law Sections 105.15 and  
24 125.25, a person is guilty of a conspiracy to commit murder  
25 when with intent that the murder be committed he agrees with

D4o6lin2

Charge

1 one or more persons to engage in or cause the commission of the  
2 murder. Accordingly, the government must prove beyond a  
3 reasonable doubt that all of the following three elements --  
4 that it must prove all of the three following elements: First,  
5 that on or about July 10th, 2004 the defendant agreed with one  
6 or more persons to murder Chan Qin Zhou; second, that the  
7 defendant did so with the intent that the murder be committed;  
8 and third that the defendant or a person with whom he agreed  
9 committed the murder of Chan Qin Zhou. I've already instructed  
10 you on the conduct constituting murder and the meaning of  
11 intent under New York law and you should follow any  
12 instructions here as well.

13 Racketeering Act Two charges the defendant with  
14 extortion and conspiracy to commit extortion of the owners of a  
15 bus company. From in or about March 2002 to December 2009 in  
16 violation of federal law as I've already instructed you, any  
17 one violation constitutes the commission of Racketeering Act  
18 Two. That is, violation of the extortion statute. I've  
19 already instructed you on the elements of extortion under  
20 federal law in Count Four. You should follow my instructions  
21 here as well. I've also already instructed you on the elements  
22 of conspiracy commit extortion under federal law in Count Five.  
23 You should follow my instructions here as well.

24 Now, Racketeering Act Three charges the defendant with  
25 operating an illegal gambling parlor, specifically a Mahjong

D4o6lin2

Charge

1 parlor, in or about 1996 in violation of federal law. Section  
2 1955 of the criminal code of the United States provides as here  
3 relevant "Whoever conducts, finances, manages, supervises,  
4 directs or owns all or part of an illegal gambling business is  
5 guilty of a crime.

6 In order to find that the defendant committed this  
7 charge of illegal gambling, the government must prove beyond a  
8 reasonable doubt all of the following three elements: First,  
9 that the gambling business charge violated New York State law;  
10 second that the gambling business was in substantially  
11 continuous operation for a period in excess of 30 days or had  
12 gross revenue of \$2,000 or more in any one day; and third that  
13 five or more persons including the defendant knowingly  
14 conducted, finance, managed, supervised, directed or owned all  
15 or part of such business.

16 Now I am going to explain illegal gambling. The first  
17 element the government must prove beyond a reason doubt is that  
18 the gambling business charged in Count Two of the indictment  
19 violated one of two New York State Penal Laws, but only one law  
20 has to be violated. Again, you must all agree on which law it  
21 is. You must be unanimous as to the law that was violated.  
22 Let me begin by defining certain terms that are used in the New  
23 York criminal statutes. Under New York State Penal Law Section  
24 225 gambling occurs and I quote "When a person stakes or risks  
25 something of value upon the outcome of a contest of chance or

D4o6lin2

Charge

1 of future contingent event not under his control or influence  
2 upon an agreement or understanding that he will receive  
3 something of value in the event of a certain outcome. A  
4 contest of chance is any game in which the outcome depends in a  
5 material degree on chance. Something of value includes money."

6 New York State Penal Law Section 225.05 makes it a  
7 crime to "knowingly profit from unlawful gambling activity."  
8 Profiting from gambling activity means when a person other than  
9 as a player accepts or receives money or other property  
10 pursuant to an agreement or understanding with any person  
11 whereby he anticipates or is to participate in the proceeds of  
12 gambling activity. "Unlawful" simply means contrary to law.  
13 Under New York law with certain exceptions not applicable here  
14 gambling activity is not authorized by law. Indeed is contrary  
15 to law.

16 Finally, a person knowingly profits from unlawful  
17 gambling activity when he is aware that he is profiting from  
18 gambling activity. New York State Penal Law Section 225.10  
19 makes it a crime to "knowingly profit from unlawful gambling  
20 activity by engaging in bookmaking to the extent that a person  
21 receives or accepts in any one day more than five bets totaling  
22 more than \$5,000." I've already explained what it mean to  
23 knowingly profit from unlawful gambling activity. "Bookmaking"  
24 mean unlawfully accepting bets from members of the public as a  
25 business rather than in a casual or personal fashion upon

D4o6lin2

Charge

1 the outcome of future contingent events.

2 I think we all should stand up and stretch for a  
3 minute before I continue.

4 MR. COHEN: Judge, may we have a five-minute break?

5 THE COURT: Very well. We'll take a five-minute  
6 break. I should comfort you with the thought that I will give  
7 you a copy of this charge to take with you into the jury room,  
8 but I first want to read it to you so that you will hear it as  
9 well as read it. Very well. We'll take a five-minute recess.

10 (Jury excused)

11 (Continued on next page)

D4o6lin2

Charge

1 (In open court; jury not present)

2 MR. COHEN: Two things I want to bring to your Honor's  
3 attention now. I didn't want to interrupt. I think you read  
4 Count Four twice to the jury inadvertently. I would ask that  
5 you instruct them not to give any particular attention to that  
6 count, that it was inadvertently read twice.

7 THE COURT: Let me ask the court reporter, is that  
8 true?

9 MR. COHEN: The government and I agree that you read  
10 Count Four twice.

11 MR. SKINNER: The indictment twice, your Honor.

12 MR. COHEN: The indictment.

13 THE COURT: The indictment but not the charge.

14 MR. COHEN: It was lengthy, the second.

15 THE COURT: What difference does that make?

16 MR. COHEN: He don't want the jury to think they  
17 should give any special emphasis to that.

18 THE COURT: Do you think by the end of this charge  
19 they will even remember?

20 MR. COHEN: I don't know, Judge, but I have to protect  
21 the record.

22 The second thing is that the homicides occurred on  
23 July 30th, and both times that you referenced them you said  
24 they occurred on July 10th. I think that might confuse the  
25 jury.

D4o6lin2

Charge

1 MS. BURNS: We had that as well, your Honor.

2 MR. SKINNER: You said July 30th once and July 10th  
3 twice.

4 MS. BURNS: It was correct in the written charge. It  
5 was just spoken as to 10th.

6 THE COURT: Thank you.

7 (Recess)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

D4o6lin2

Charge

1 (In open court; jury present)

2 THE COURT: You may all be seated. We're coming down  
3 the home stretch.

4 The second element the government must prove beyond a  
5 reasonable doubt is that the gambling business was either in  
6 substantially continuous operation for a period in excess of 30  
7 days or that the gambling business had gross revenues of \$2,000  
8 or more in one day. Either one is sufficient as long as you  
9 are in agreement as to which one has been proven beyond a  
10 reasonable doubt. The government is not required to prove that  
11 the business operated on an every day basis throughout the  
12 entire period alleged. Instead, the government must prove that  
13 over some period in excess of 30 days the gambling business was  
14 conducted with sufficient regularity that it existed as an  
15 ongoing business rather than a casual activity. The government  
16 is not required to prove that the defendant knew that the  
17 business was in substantially continuous operation. It is for  
18 to you determine the specific period when the business was in  
19 substantially continuous operation. If you find that the  
20 period was longer than 30 days, then you should consider the  
21 third element.

22 Another way the government can prove the second  
23 element is by proving beyond a reasonable doubt that the  
24 gambling business had gross revenues of \$2,000 or more in any  
25 one day. Gross revenue means the total amount wagered in one



D4o6lin2

Charge

1 day regardless of how much was paid out to betters as winnings.  
2 The government is not required to prove that the defendant knew  
3 that the business had gross revenues of 2,000 or more in any  
4 one day. If you find that gross revenues were equal to or  
5 greater than \$2,000 on any one day, then you should go on to  
6 consider the third element of illegal gambling. The third  
7 element the government must prove beyond a reasonable doubt is  
8 that five or more persons, including the defendant, knowingly  
9 conducted, financed, managed supervised, directed, or owned the  
10 gamble business during the period when you found it was in  
11 substantially continuous operation or had gross revenues of  
12 \$2,000 or more in one day. The terms "finance," "managed,"  
13 "supervised," "directed," and "owned" should be given their  
14 every day ordinary meaning.

15           However, I would like to explain the term "conducted"  
16 in more detail. To conduct a gambling business means to  
17 perform any act, function or duty which is necessary or helpful  
18 in the regular operation of the business. Five or more people,  
19 including the defendant must have participated during the  
20 period that you found that the gambling business or that you  
21 find if you do that the gambling business was in substantially  
22 continuous operation or had gross revenue of \$2,000 or more in  
23 one day. The government does not have to prove that all five  
24 were engaged at any particular time in conducting the business  
25 as long as it proves that all five participated in the business

D4o6lin2

Charge

1 during the period you identified. It is not required that all  
2 five be charged in the indictment.

3 Each of the five persons must have knowingly  
4 participated in the business. This means that each of them  
5 knew that they were involved in conducting a gambling business  
6 and were not involved by accident, negligence, or mistake. The  
7 government does not have to prove that the defendant or any  
8 others knew that the gambling business was illegal.

9 Now, Racketeering Act Four of Count Two charges the  
10 defendant with operating an illegal gambling parlor, a Tien Lin  
11 or 13 card parlor from in or about 1996 to in or about 1997 in  
12 violation of federal law. I just instructed you on the  
13 elements of illegal gambling under federal law. You should  
14 follow those instructions here as well.

15 Racketeering Act Five charges, that is Racketeering  
16 Act Five in Count Two, charges the defendant with operating an  
17 illegal gambling parlor, a Tien Lin or 13 Card parlor -- Tien  
18 Lin is 13 Card in Chinese -- from in or about 1999 to in or  
19 about 2002 in violation of federal law. I've already  
20 instructed you on the elements of illegal gambling under  
21 federal law. You should follow my instructions here as well.

22 Now, we come to Count One of the indictment, which  
23 charges the defendant with conspiracy to violate the RICO  
24 statute. This means that the defendant has been charged with  
25 agreeing to conduct or participate in the affairs of an

D4o6lin2

Charge

1 enterprise through a pattern of racketeering activity. Section  
2 1962(d) of the United States Criminal Code provides that it  
3 shall unlawful for any person to conspire to violate the RICO  
4 statute. I've already read part of Count One. I will give you  
5 a copy of the indictment to take into the jury room so you can  
6 read it as well. Before I instruct you on the elements of a  
7 conspiracy to violate the RICO statute, let me say a few words  
8 about the difference between the conspiracy charge in Count One  
9 and the RICO charge contained in Count Two on which I've  
10 already instructed you.

11 As I instructed you earlier in the context of Count  
12 Five, a conspiracy to commit a crime is an entirely separate  
13 and distinct offense from the substantive crime that is the  
14 object of the conspiracy. Count Two charges a substantive  
15 violation of the RICO statute. That is, it charges the  
16 defendant with actually having participated in the affairs of  
17 an enterprise through a pattern of racketeering activity.  
18 Count One charges the defendant with a different crime. That  
19 is, it charges him with conspiring or agreeing to participate  
20 in the affairs of an enterprise through a pattern of  
21 racketeering activity.

22 A RICO conspiracy is never simply an agreement to  
23 commit predicate acts that allegedly form a pattern of  
24 racketeering nor is it merely an agreement to join in a  
25 particular enterprise. Rather, it is an agreement to conduct

D4o6lin2

Charge

1 or to participate in the conduct of a charged enterprise's  
2 affairs through a pattern of racketeering activity.

3 I've already explained the law of conspiracy in my  
4 instructions to Count Five and you should follow those  
5 instructions here as well except of course Count Five involves  
6 a conspiracy to violate the federal extortion statute and Count  
7 One charges a conspiracy to violate the federal RICO statute.  
8 I will now provide you with additional instructions specific to  
9 the RICO conspiracy charged in Count One.

10 In order to prove a defendant guilty of conspiracy to  
11 violate the RICO statute as charged in Count One, the  
12 government must establish beyond a reasonable doubt the  
13 following four elements: First, that an enterprise was  
14 established as alleged in the indictment.

15 (Continued on next page)

16  
17  
18  
19  
20  
21  
22  
23  
24  
25

D4OVLIN3

Charge

1 THE COURT: Second, that the enterprise affected  
2 interstate commerce; third, that the defendant was associated  
3 with or employed by the enterprise; and, fourth, that the  
4 defendant knowingly and willfully agreed with at least one  
5 other person to participate in the affairs of the enterprise  
6 through a pattern of racketeering activity.

7 The first three elements of Count One are very similar  
8 to the first three elements of Count Two, which I've already  
9 instructed you. However, they are different in an important  
10 respect. Unlike Count Two, for purposes of Count One, the  
11 government is not required to prove that the alleged enterprise  
12 was actually established -- this is a conspiracy charge -- or  
13 that the defendant was actually employed by or associated with  
14 the enterprise, or that the enterprise actually affected  
15 interstate commerce. Rather, because the agreement to commit a  
16 RICO offense is the essence of the RICO conspiracy offense  
17 charged in Count One, the government need only prove that if  
18 the conspiracy offense were completed as contemplated, that the  
19 enterprise would be established, that the defendant would be  
20 employed or associated with the enterprise, and that the  
21 enterprise would affect interstate commerce.

22 Of course, if you find that the alleged enterprise was  
23 actually established, the first element would be met.  
24 Likewise, if you find that the defendant was actually employed  
25 by or associated with the enterprise, and that the enterprise

D4OVLIN3

Charge

1 actually affected interstate commerce, then the second and  
2 third elements would be met.

3 I turn now to the fourth element, the agreement.

4 To prove the defendant guilty of the crime charged in  
5 Count One, the government must prove beyond a reasonable doubt  
6 that the defendant knowingly and willfully became a member of  
7 the conspiracy charged. This means that in order to meet its  
8 burden of proof, the government must show that the defendant  
9 agreed to participate directly or indirectly in the affairs of  
10 an enterprise through a pattern of racketeering activity. You  
11 may find -- but need not find -- that by actually committing  
12 two or more racketeering acts, the defendant has shown that he  
13 agreed to participate in the affairs of the enterprise through  
14 a pattern of racketeering activity. You may also find -- but  
15 need not find -- that the defendant agreed to participate in  
16 the affairs of the enterprise through a pattern of racketeering  
17 activity if you find that he agreed personally to commit two or  
18 more racketeering acts to further the affairs of the  
19 enterprise.

20 The government is not, however, required to prove that  
21 the defendant actually committed or agreed to commit two or  
22 more racketeering acts in order to find that this element has  
23 been met. Instead, the focus on this element is on the  
24 defendant's agreement to participate in the objective of an  
25 enterprise, to engage in a pattern of racketeering activity,

D4OVLIN3

Charge

1 and not on the defendant's commission or agreement to commit  
2 the individual criminal acts. Thus, the government must prove  
3 that the defendant entered into the charged RICO conspiracy,  
4 and participated in some manner in the overall objective of the  
5 conspiracy, and that the conspiracy involved the commission of  
6 at least two racketeering acts.

7 I will now review the predicate acts that the  
8 government alleges were committed or agreed to be committed as  
9 part of the RICO conspiracy, all of which are listed in the  
10 indictment.

11 As I just explained, the government is not required to  
12 prove either that the defendant agreed to himself commit two of  
13 these acts, or that he actually committed such acts, only that  
14 the defendant conspired to participate in the conduct of the  
15 affairs of the alleged enterprise. However, proof that the  
16 defendant himself agreed to or did commit such acts may be used  
17 by you to conclude that the defendant agreed to participate in  
18 the conduct of the alleged enterprise.

19 Because the substantive RICO crime, that is, the crime  
20 that is the object of the conspiracy, requires the actual  
21 commission of two racketeering acts, in order to prove a RICO  
22 conspiracy, the government must prove that two of these acts  
23 either were committed or were intended to be committed as part  
24 of the conspiracy. There is no requirement in Count One, the  
25 RICO conspiracy, that the following predicate offenses were

D4OVLIN3

Charge

1 actually committed by anyone.

2           Several of the charged categories of predicate  
3 offenses charge a violation of more than one specific law. In  
4 order to find that a given predicate offense was, in fact, an  
5 object of the RICO conspiracy, you need not find that the  
6 object of the conspiracy involved violations of all of the laws  
7 within each predicate act; rather, you need only find that the  
8 object of the conspiracy involved the violation of at least one  
9 of the specific laws. However, you must agree unanimously on  
10 which particular crime, if any, was the object of the charged  
11 RICO conspiracy.

12           The defendant is charged in Count One with being a  
13 member of a conspiracy engaged in racketeering activity  
14 involving murder and conspiracy to commit murder, in violation  
15 of New York State law. I have already instructed you on the  
16 elements of the substantive crimes, and you should follow my  
17 instructions here, as well.

18           The defendant is charged in Count One with being a  
19 member of a conspiracy engaged in racketeering activity  
20 involving extortion, in violation of federal law. I have  
21 already instructed you on the elements of this crime, and you  
22 should follow my instructions here, as well.

23           The defendant is charged in Count One with being a  
24 member of a conspiracy engaged in racketeering activity  
25 involving the operation of an illegal gambling business, in



D4OVLIN3

Charge

1 violation of both federal law and New York State law, New York  
2 State Penal Law 225.10. I've already instructed you on the  
3 elements of these crimes, and you should follow my instructions  
4 here, as well. However, I want to caution you that although a  
5 violation of New York Penal Law Section 225.05 is one way, the  
6 government may prove the first element of the federal gambling  
7 law. That section cannot, on its own, constitute a predicate  
8 offense here; only a violation of federal law, that is, Section  
9 1955 of the criminal code of the United States, can constitute  
10 a predicate act.

11 Finally, I turn to Count Three.

12 If you have a reasonable doubt about whether the  
13 defendant committed the crimes charged in Counts Four and Five,  
14 you must acquit the defendant on Count Three. If, and only if,  
15 you find that the government has proven that the defendant  
16 committed a crime charged in either Count Four or Count Five do  
17 you proceed to consider Count Three.

18 Count Three of the indictment charges the defendant  
19 with violating Section 924(j)(1) of the criminal code of the  
20 United States. Section 924(j) refers to another section of the  
21 criminal code, Section 924(c). And Section 924(c) provides, in  
22 pertinent part, that, and I quote:

23 "Any person who, during and in relation to any crime  
24 of violence for which he may be prosecuted in a court of the  
25 United States, uses a firearm, shall be guilty of a crime."

D4OVLIN3

Charge

1           Section 924(j) provides, in pertinent part, that: "A  
2 person who, in the course of a violation of Subsection C,  
3 causes the death of a person through the use of a firearm,  
4 shall, if the killing is a murder, as defined by statute, be  
5 guilty of a crime."

6           Now, Count Three of the indictment reads as follows:

7           On or about July 30th, 2004 -- oh, and I should tell  
8 you, I have used "July 10th" several times inadvertently. I  
9 have always meant July 30, which is the date in question in  
10 Count Three and in the other counts that I charged you on.

11          So I'm going to read Count Three now.

12          "On or about July 30, 2004, in the Southern District  
13 of New York and elsewhere, Xing Lin, also known as Ding Pa, the  
14 defendant, willfully and knowingly, during and in relation to  
15 crimes of violence for which he may be prosecuted in a court of  
16 the United States, namely, extortion and conspiracy to commit  
17 extortion, did use a firearm, and, in furtherance of such  
18 crime, did cause the death of a person through the use of a  
19 firearm, which killing is murder as defined in the criminal  
20 code of the United States. To wit, Lin directed another person  
21 to shoot Chan Qin Zhou inside a club in Queens, New York. And  
22 the other person did shoot Zhou, as well as two bystanders, Mei  
23 Ying Li, and another person, killing Zhou and Li, and wounding  
24 Victim 3, in violation of Sections 924(j)(1) and (2) of the  
25 United States Criminal Code."

D4OVLIN3

Charge

1 Count Three of the indictment, which I've just read to  
2 you, charges the defendant with violating Section 924(j)(1) --  
3 well, I have read you the language of those statutes.

4 In order to find the defendant guilty of Count Three,  
5 you must find that the government has proved beyond a  
6 reasonable doubt all of the following four elements:

7 First, that the defendant committed either the crime  
8 of violence charged in Count Four of the indictment, or the  
9 crime of violence charged in Count Five of the indictment.  
10 That is the first essential element of the crime charged in  
11 Count Three.

12 Second, that the defendant knowingly used a firearm  
13 during and in relation to the commission of one of those  
14 crimes.

15 Third, that the defendant's conduct caused the death  
16 of Chan Qin Zhou and Mei Ying Li.

17 And, fourth, that the death of those persons qualifies  
18 as murder as I will define that term for you in a moment.

19 The first element that the government must prove  
20 beyond a reasonable doubt is that the defendant committed one  
21 of the crimes of violence charged in Count Four or Count Five  
22 of the indictment. I instruct you that extortion and extortion  
23 conspiracy are crimes of violence which can be prosecuted in a  
24 United States court. However, in order to find that the  
25 government has satisfied this element, you must find that the

D4OVLIN3

Charge

1 government has proved beyond a reasonable doubt that the  
2 defendant, in fact, committed one of the crimes charged in  
3 either Count Four or Count Five. If you have a reasonable  
4 doubt about both Count Four and Count Five, you must acquit the  
5 defendant of the crime charged in Count Three.

6 If you find beyond a reasonable doubt that the  
7 defendant committed the crime of violence charged in either  
8 Count Four or Count Five, then you must consider the second  
9 element of Count Three.

10 To establish the second element, the government must  
11 prove beyond a reasonable doubt that the defendant knowingly  
12 used or aided and abetted the use of a firearm during and in  
13 relation to the crime which you find the government has proved  
14 beyond a reasonable doubt. A firearm is defined in Section  
15 921(a)(3) of the United States Criminal Code to mean any weapon  
16 which will or is designed to or may readily be converted to  
17 expel a projectile by the action of an explosive. I instruct  
18 you that a gun is a firearm. To knowingly use a firearm means  
19 to use the firearm purposefully and voluntarily, and not by  
20 accident or mistake. Use of a firearm requires an active  
21 employment of the firearm by the person. Active employment  
22 means brandishing, displaying, referring to a firearm so that  
23 others present knew the defendant had the firearm available,  
24 and, of course, firing or attempting to fire a firearm.

25 The government must establish that the defendant used

D4OVLIN3

Charge

1 the firearm during and in relation to the commission of a crime  
2 charged in this indictment of which you have found the  
3 defendant guilty beyond a reasonable doubt; here, extortion or  
4 extortion conspiracy. The circumstances surrounding the  
5 presence of the firearm must suggest that the defendant  
6 intended to have a firearm available for use during the  
7 commission of the underlying crime.

8 And the third element of Count Three is that the  
9 government must prove beyond a reasonable doubt that the  
10 defendant's conduct caused the death of a person.

11 The indictment charges that, as Count Three charges,  
12 the defendant caused the death of Chan Qin Zhou and Mei Ying  
13 Li. A defendant's conduct may be found to cause the death of a  
14 person if it had such an effect in producing that person's  
15 death as to lead a reasonable person to regard the defendant's  
16 conduct as a cause of the death. The death of a person may  
17 have one or more than one cause. You need not find that the  
18 defendant shot the victim or that he committed the final fatal  
19 act. The government need only prove beyond a reasonable doubt  
20 that the conduct of the defendant was a substantial factor in  
21 causing the victim's death.

22 Now, in considering Count Three, you should apply the  
23 following definition of "murder," which comes from Section 1111  
24 of the criminal code of the United States.

25 And I quote: "Murder is the unlawful killing of a

D4OVLIN3

Charge

1 human being with malice aforethought. It includes murder that  
2 is committed in the perpetration of or an attempt to perpetrate  
3 any murder.

4 If you do not find beyond a reasonable doubt that the  
5 defendant is guilty of Count Three, you should proceed to  
6 consider another legal theory of criminal liability that is  
7 called aiding and abetting.

8 In Count Three of the indictment, the defendant is  
9 also charged with aiding and abetting the use of a firearm  
10 during and in relation to the crimes charged in Counts Four and  
11 Five, namely, extortion and conspiracy to commit extortion. If  
12 the defendant did not himself commit a crime, but aided and  
13 abetted the commission of the crime by others, the defendant  
14 may be found guilty of the crime.

15 The aiding and abetting statute, Section 2 of the  
16 federal criminal code, reads as relevant here as follows:

17 "Whoever commits an offense against the United States,  
18 or aids, abets, counsels, commands, induces, or procures its  
19 commission, is punishable as a principle."

20 Under this statute, it is not necessary for the  
21 government to show that the defendant performed the act with  
22 which he is charged in order for you to find him guilty. A  
23 person who aids and abets another to commit an offense is just  
24 as guilty of that offense as if he had committed it himself.  
25 Accordingly, you may find the defendant guilty of Count Three

D4OVLIN3

Charge

1 if you find that the government has proven beyond a reasonable  
2 doubt that another person actually committed the offense with  
3 which the defendant is charged, and that the defendant aided or  
4 abetted that person in the commission of the offense.

5 As you can see, the first requirement is that you find  
6 that another person has committed the crime charged.  
7 Obviously, no one can be convicted of aiding and abetting a  
8 criminal act of another if no crime was committed by the other  
9 in the first place. But if you do find that a crime was  
10 committed, then you must consider whether the defendant aided  
11 and abetted the commission of the crime.

12 In order to aid or abet another to commit a crime, it  
13 is necessary that the defendant willfully and knowingly  
14 associate himself in some way with the crime, and that he  
15 willfully and knowingly seek by some act to help make the crime  
16 succeed. The mere presence of the defendant where a crime is  
17 being committed, even coupled with knowledge by the defendant  
18 that a crime is being committed, or the mere acquiescence by a  
19 defendant in the criminal conduct of others, even with guilty  
20 knowledge, is not sufficient to establish aiding and abetting.  
21 An aider and abettor must have some interest in the criminal  
22 venture.

23 To determine whether the defendant aided or abetted  
24 the commission of Count Three, ask yourself these questions:

25 One. Did the defendant participate in the crime

D4OVLIN3

Charge

1 charged as something he wished to bring about?

2 Two. Did the defendant associate himself with the  
3 criminal venture knowingly and willfully?

4 Three. Did the defendant seek by his actions to make  
5 the criminal venture succeed?

6 If the answers to each of these questions is yes, then  
7 the defendant is an aider and abettor. If the answer to any of  
8 these questions is no, the defendant is not an aider or  
9 abettor.

10 As to all elements of the crimes, except venue, the  
11 government has the burden of proof beyond a reasonable doubt.  
12 With regard to venue only, the government meets its burden of  
13 proof if it establishes that it is more likely than not that an  
14 act in furtherance of the crime you are considering occurred in  
15 the Southern District of New York. In this case, the  
16 government and the defendant have agreed that venue is proper  
17 in this district for each of the crimes charged.

18 The law requires only substantial similarity between  
19 the indictment and the proof. That is sufficient. With  
20 respect to the dates mentioned in the indictment, the same  
21 principle applies.

22 For example, the indictment charges that the RICO  
23 conspiracy in Count One existed from 1996 up to and including  
24 December of 2009. The indictment charges that the extortion  
25 conspiracy in Count Five existed from March of 2002 up to and



D4OVLIN3

Charge

1 including December of 2009. It's not essential that the  
2 government prove that the conspiracy started and ended on those  
3 specific dates. It's enough if you find that, in fact, a  
4 conspiracy was formed, and existed for some time within that  
5 period. The law requires only a substantial similarity between  
6 the dates alleged in the indictment and the dates established  
7 by the evidence.

8           You are the sole judges of all of the questions of  
9 fact submitted to you and of the credibility of the witnesses.  
10 Your authority, however, is not to be exercised arbitrarily; it  
11 must be exercised with sincere judgment, sound discretion, and  
12 in accordance with the rules of law that I give you. You may  
13 not speculate.

14           In making your determination of the facts in this  
15 case, your judgment must be applied only to that which is  
16 properly evidence. The sworn testimony of the witnesses is  
17 evidence. The documents and exhibits actually received in  
18 evidence are evidence. Exhibits marked for identification, but  
19 not received, are not evidence, nor are materials brought forth  
20 to refresh a witness's recollection. Stipulations, that is,  
21 agreements between counsel that certain facts are true,  
22 constitute evidence, and you must regard such agreed facts as  
23 true.

24           There are two types of evidence that you may properly  
25 use in deciding whether the defendant is guilty or not guilty.

D4OVLIN3

Charge

1           One type of evidence is called direct evidence.  
2 Direct evidence is the testimony of a witness about a fact in  
3 dispute that the witness saw, heard, touched, or tasted.  
4 Direct evidence can also be a document that self-establishes a  
5 fact in this view.

6           Circumstantial evidence is evidence that does not  
7 directly prove a fact in dispute, but that permits a reasonable  
8 inference or conclusion that a fact exists or that a fact does  
9 not exist. That is all there is to circumstantial evidence.  
10 You infer on the basis of reason and experience and common  
11 sense from an established fact the existence or nonexistence of  
12 some other fact.

13           Circumstantial evidence has the same weight as direct  
14 evidence. Federal law does not distinguish between direct  
15 evidence and circumstantial evidence, but simply requires that  
16 before convicting a defendant, a jury must be satisfied of that  
17 defendant's guilt beyond a reasonable doubt from all of the  
18 evidence in the case.

19           Now, what is not evidence?

20           The indictment, as I've already told you, is not  
21 evidence. Testimony that has been stricken or excluded is not  
22 evidence, and may not be considered by you in any way in  
23 rendering a verdict. The lawyers' questions are not evidence.  
24 It is the witnesses' answers that are the evidence, not the  
25 questions. And you may not treat the questions as evidence.

D4OVLIN3

Charge

1           Arguments by lawyers are not evidence, because the  
2 lawyers are not witnesses. What they've said to you in their  
3 opening statements and in their summations is intended to help  
4 you understand the evidence to reach your verdict. However, if  
5 your recollection of the evidence differs from the lawyers'  
6 statements about the evidence, it is your recollection that  
7 controls.

8           So, too, you must not take the rulings that I have  
9 made during the trial as an indication of my view as to what  
10 your decision should be.

11           I should also say that counsel not only have the  
12 right, but also are under a duty, to present whatever legal  
13 objections there may be to the admissibility of evidence.  
14 Counsel also have the right to ask for conferences at the bench  
15 out of the hearing of the jury. These deal with questions of  
16 law which I alone must decide. You should not draw any  
17 inferences because counsel asks for a conference with the Court  
18 at the bench out of the hearing of the jury.

19           You are being called upon to resolve the factual  
20 issues in this case. You will have to now decide where the  
21 truth lies. And a part of that decision will involve making  
22 judgments about the testimony of the witnesses you have  
23 listened to and observed. In making those judgments, you  
24 should carefully scrutinize all of the testimony of each  
25 witness, the circumstances under which each witness testified,

D4OVLIN3

Charge

1 prior inconsistent statements, if any, and any other matter in  
2 evidence that may help you to decide the truth and the  
3 significance of each witness's testimony.

4         There is no magic formula by which you should evaluate  
5 testimony. You bring with you to this courtroom all of the  
6 experience and background of your lives. In your everyday  
7 affairs, you determine for yourselves the reliability or  
8 unreliability of statements made to you by others. The same  
9 tests that you use in your everyday dealings are the tests you  
10 should apply in your deliberations. These tests apply to all  
11 the witnesses.

12         For example, the fact that a witness is a law  
13 enforcement officer does not in itself make that witness more  
14 or less credible than any other witness. You should size up  
15 each witness individually. The manner in which the witness  
16 gave testimony on the stand, the opportunity that the witness  
17 had to observe the facts about which the witness testified, the  
18 probability or improbability of the witness's testimony when  
19 viewed in light of all of the other evidence in the case, all  
20 these are factors you should take into consideration in  
21 determining the weight, if any, you should -- that you will  
22 assign to a witness's testimony.

23         Your decision whether or not to believe a witness may  
24 depend on how that witness impressed you. Was the witness  
25 candid, frank, and forthright, or did it seem as if the witness

D4OVLIN3

Charge

1 was hiding something, being evasive in some manner? How did  
2 the witness's manner on direct examination compare with the  
3 witness's manner on cross-examination? Was the witness's  
4 testimony consistent or was it contradictory? Did the witness  
5 appear to know what the witness was talking about? And did the  
6 witness strike you as someone who was trying to report  
7 knowledge accurately?

8 If you find that any witness has deliberately  
9 testified falsely as to any material issue in this case, you  
10 may disregard all or any material -- or whatever part of that  
11 witness's testimony you choose. How much you choose to believe  
12 a witness may be influenced by the witness's bias or interest.  
13 Does the witness have a relationship with the government or the  
14 defendant that may have affected how the witness testified?  
15 Does the witness have some incentive or motive that might have  
16 caused the witness to shade the truth? Or does the witness  
17 have some bias, prejudice, or hostility that may have caused  
18 the witness consciously or not to give you something other than  
19 a completely accurate account of the facts testified to?

20 Even if a witness is impartial, you should consider  
21 whether the witness had an opportunity to observe the facts  
22 testified about. Ask yourselves whether the witness's  
23 knowledge and recollection of the facts stand up in light of  
24 all the other evidence.

25 In other words, what you must do in deciding

D4OVLIN3

Charge

1 credibility is to size up each witness in light of that  
2 person's knowledge and demeanor, prior inconsistent statements,  
3 if any, the explanations given, and in light of all the other  
4 evidence in the case, just as you would in any important  
5 matter.

6 In deciding what to believe, remember that you should  
7 use your common sense, your good judgment, and your experience.  
8 There is no legal requirement that the government must  
9 investigate or prove its case through any particular means or  
10 use any particular investigative technique. All of the  
11 investigative techniques used in this case were lawful. Use of  
12 evidence obtained pursuant to searches is lawful.

13 Your approval or disapproval of the techniques used or  
14 of the fact that particular techniques were not used is not to  
15 enter into your deliberations. Your duty is to determine  
16 whether or not based on your evaluation of the evidence before  
17 you, the guilt of the defendant has been proved beyond a  
18 reasonable doubt. That is the ultimate issue for your  
19 determination.

20 Evidence has been presented about some persons not on  
21 trial here, including persons the government contends are  
22 co-conspirators. You may not speculate about the reasons why  
23 any person is not named as a defendant in the indictment or is  
24 not on trial before you here. These matters have no bearing on  
25 the issues before you.

D4OVLIN3

Charge

1           In this case, the defendant decided not to testify.  
2       Under our Constitution, every criminal defendant has a right  
3       not to testify at trial. You may not draw any adverse  
4       inference against the defendant because he did not take the  
5       witness stand. You may not consider this against the defendant  
6       in any way in your deliberations in the jury room.

7           You've heard the testimony of witnesses who have  
8       testified about a grant of immunity from the Court or who have  
9       been promised by the government in written agreements that in  
10      consideration for their truthful testimony and cooperation with  
11      the government, they will not be prosecuted for any crimes  
12      which they may have committed either here in court or in  
13      interviews with the prosecutors.

14          With respect to both categories of witnesses, what  
15      this means is that the testimony of the witness may not be used  
16      against the witness in any criminal procedure, in any criminal  
17      case, except a prosecution for perjury, giving a false  
18      statement, or otherwise failing to comply with the immunity  
19      order of this Court.

20          You are instructed that the government is entitled to  
21      call as a witness a person who has been granted immunity. You  
22      may convict a defendant on the basis of such a witness's  
23      testimony alone if you find that the testimony proves the  
24      defendant guilty beyond a reasonable doubt. However, the  
25      testimony of a witness who has been granted immunity by the

D4OVLIN3

Charge

1 Court should be examined by you with greater care than the  
2 testimony of an ordinary witness. You should scrutinize it  
3 closely to determine whether or not it is colored in such a way  
4 as to place guilt upon the defendant in order to further the  
5 witness's own interests or such a witness confronted with the  
6 realization that he can win his own freedom by helping to  
7 convict another as a motive to falsify his testimony. Such  
8 testimony should be scrutinized by you with greater care, and  
9 you should act upon it with caution. If you believe it to be  
10 true and determine to accept the testimony, you may give it  
11 such weight, if any, that you believe it deserves.

12 You should ask yourselves whether a witness would  
13 benefit more by lying or by telling the truth. Was the  
14 witness's testimony made up in any way because the witness  
15 believed or hoped that he would somehow receive favorable  
16 treatment by testifying falsely?

17 The charge says "she," but really it should be "he."  
18 So when you get to this part of the charge, keep in mind that  
19 that's just a typographical error, because all of the witnesses  
20 were he's.

21 Was the witness's testimony made up in any way because  
22 the witness believed or hoped that he would somehow receive  
23 favorable treatment by testifying falsely, or did the witness  
24 believe that the witness's interests would be best served by  
25 testifying truthfully? If you believe that the witness was



D4OVLIN3

Charge

1 motivated by hopes of personal gain, was the motivation one  
2 which would cause the witness to lie, or was it one which would  
3 cause the witness to tell the truth?

4 These are all matters for you to consider. Your  
5 function is to weigh the evidence in the case, and to reach a  
6 verdict based solely upon the evidence and the instructions  
7 that I have given and will give you, without resorting to  
8 speculation, conjecture, or surmise.

9 The government, to prevail on a count charged in the  
10 indictment, must prove the elements of that count beyond a  
11 reasonable doubt as I've already explained to you. If the  
12 government succeeds, your verdict should be guilty. If the  
13 government fails, your verdict must be not guilty. You must  
14 consider each charge separately and return a separate verdict  
15 as to each count as shown on the verdict form that I will give  
16 you. To report a verdict as to any count, all jurors must  
17 agree. Your verdict must be unanimous.

18 Under your oath as jurors, you may not permit the  
19 punishment of the defendant, if convicted, to enter into your  
20 deliberations or to influence your verdict in any way. Your  
21 duty is to decide the case solely upon the evidence. It is my  
22 duty -- and my duty alone -- to impose whatever punishment I  
23 determine is prescribed by law.

24 Now is the time that each of you should exchange your  
25 views with your fellow jurors. That is the very purpose of

D4OVLIN3

Charge

1 jury deliberations: To discuss and consider the evidence, to  
2 listen to the arguments of fellow jurors, to present your  
3 individual views, to consult with one another, and to reach an  
4 agreement based solely on the evidence, if you can do so,  
5 without doing harm to your own individual judgment. Each of  
6 you must decide the case for yourself, after consideration with  
7 your fellow jurors of the evidence in the case. But you should  
8 not hesitate to change an opinion that, after discussion with  
9 your fellow jurors, appears erroneous in light of the  
10 discussion and viewed against the evidence and the law.  
11 However, if, after carefully considering all the evidence and  
12 arguments of your fellow jurors, if you entertain a  
13 conscientious view that differs from others, you are not to  
14 yield your position simply because you are outnumbered or  
15 outweighed.

16 I further instruct you that you should deliberate  
17 without sympathy or prejudice as to any party. The law does  
18 not permit jurors to be governed by sympathy, prejudice, or  
19 public opinion. Both the accused and the public expect that  
20 you will carefully and impartially consider all the evidence in  
21 the case, follow the law as stated by me, and reach a just  
22 verdict regardless of the consequences.

23 Now, I am going to ask Juror No. 1, Michael McDonald,  
24 to act as foreperson. The foreperson will chair your meeting.  
25 But the foreperson's vote carries no greater weight during your

D4OVLIN3

Charge

1 deliberations than that of any other juror.

2           When you begin your deliberations, a copy of this  
3 charge and a verdict form will be sent into the jury room with  
4 you. You will also receive a copy of the indictment. You may  
5 request that any exhibit be sent to you in the jury room; that  
6 is, any exhibit that has been received in evidence. If it is  
7 necessary during the course of your deliberations, you may also  
8 request that particular testimony be read back to you. But  
9 please remember that it's not always easy to locate the  
10 particular testimony that you want to hear. So be as specific  
11 as you possibly can.

12           After receiving your request, I must consult with the  
13 lawyers and consider their views on which portion of the  
14 transcript would respond to your request. As you can see, this  
15 is a time-consuming process, so please be patient and do not  
16 expect an immediate response.

17           If you have a question or wish to send a message to me  
18 during deliberations, put it in writing and have the foreperson  
19 sign it, then give the note to the marshal, who will be outside  
20 your door, and who will relay it to me. I will respond to you  
21 as promptly as I can either in writing or by calling you into  
22 the courtroom so I can address you orally.

23           When you communicate with me, if you are divided,  
24 never state or specify your numerical division at the time.

25           When you have reached a verdict as to each count,

D4OVLIN3

Charge

1 please complete the verdict form and give it to the marshal,  
2 who will relay it to me.

3 I now have the unpleasant task of separating the  
4 alternate jurors. I say that because Ms. Lamboy, Mr. Silber,  
5 Ms. Miller, and Mr. Gica sat and very patiently heard  
6 everything. And I regret that you cannot be part of the final  
7 deliberations, but our system would not work if we did not make  
8 arrangements for alternates. However, I cannot excuse you  
9 entirely, because of the unpredictability of human affairs.  
10 Please be sure that Mr. Daniels has the telephone number at  
11 which you can be reached, because it may be necessary to call  
12 you back to participate in deliberations. For that reason, I'm  
13 going to ask you to continue to follow my instructions not to  
14 discuss this case with anyone until after a verdict has been  
15 reached.

16 Thank you for being with us, and thank you for the  
17 very close attention which you have given to everything during  
18 the trial. You have performed a very important civic duty, and  
19 the community is grateful to you.

20 Now we can swear in the marshal.

21 (Marshal sworn)

22 THE COURT: All right. I will give you to take with  
23 you into the jury room copies of my charge, copies of the  
24 indictment. I will mark one copy of my charge as Court Exhibit  
25 1. I will also give you a verdict sheet which the foreperson

D4OVLIN3

Charge

1 will fill out when you have reached a verdict.

2 Now, everyone must be hungry. So the first thing that  
3 will happen when you go to the jury room is you will get lunch.

4 You may now all retire to the jury room.

5 (At 1:23 p.m., the jury retired to deliberate)

6 THE COURT: We will be in recess until 2:30, but --  
7 I'm sorry, until 3 o'clock. But I do require that one  
8 representative of each side be present in the courtroom in the  
9 event that we hear from the jury in the interim.

10 Now, I'm going to excuse all of you for lunch for an  
11 hour, in any event.

12 MS. BURNS: Thank you.

13 THE COURT: But after that, I need to have a  
14 representative of each side in the courtroom as long as the  
15 jury is deliberating.

16 MR. COHEN: I'm assuming, your Honor, for the defense,  
17 that's going to be me.

18 THE COURT: I'm not surprised.

19 MR. SKINNER: Your Honor, there was one small issue  
20 with the charge.

21 THE COURT: Yes.

22 MR. SKINNER: Something that probably should have been  
23 taken out yesterday that I think we all missed.

24 On Page 60, there's a reference to informal immunity  
25 written agreements from the government that would be

D4OVLIN3

1 nonprosecution agreements. There weren't any nonprosecution  
2 agreements in this case. To avoid any confusion as to what's  
3 meant, and because we excised any references to nonprosecution  
4 agreements elsewhere, I propose that you simply send the jurors  
5 a brief note indicating that this language occurs, and that you  
6 should disregard it because there were no such written  
7 agreements.

8 THE COURT: Fine.

9 MR. COHEN: And, your Honor, I would request, if your  
10 Honor is inclined to send in such a note, you include in it  
11 that jurors may base their verdict on the evidence as you  
12 previously told them.

13 THE COURT: I'm sorry, I can't hear you.

14 MR. COHEN: I'm sorry, your Honor.

15 If your Honor is inclined to send in a note to the  
16 jury with Mr. Skinner's request on it, which, of course, I  
17 don't object to, I would ask also that you include in it that  
18 the jury may base their verdict on the evidence or on the lack  
19 of evidence.

20 THE COURT: I did say that.

21 MR. COHEN: You said it once. But I think there were  
22 probably seven or eight times that you said "on the evidence,"  
23 without saying "lack of evidence."

24 And my other request, then -- I'm sorry I didn't pick  
25 up on this earlier -- is that your Honor --

D4OVLIN3

1 THE COURT: It's just too complicated and too late.  
2 We should have picked that up at the charge conference.

3 MR. COHEN: And my other request is that your Honor  
4 instruct the jury that prior inconsistent statements are not  
5 admitted for their truth, but only as to the credibility of the  
6 witness. I think that's a crucial instruction.

7 THE COURT: Why?

8 MR. COHEN: I actually thought it was in there.

9 THE COURT: What is it that you're talking about?

10 MR. COHEN: Well, when your Honor told the jury in  
11 assessing the credibility of a witness they can consider, among  
12 other things, prior inconsistent statements that the witness  
13 may have made, I think that your Honor should also instruct the  
14 jury that those prior inconsistent statements were not  
15 introduced for the truth of those statements, but, rather, only  
16 as to assess the credibility of the witness.

17 THE COURT: Well, what prior inconsistent statements  
18 are you talking about? Are you really talking about the  
19 absence from some prior questioning of the answers that were  
20 given here; isn't that right?

21 MR. COHEN: There were some.

22 THE COURT: What is the clearest inconsistent  
23 statement you're talking about? That was a generalized charge;  
24 I didn't really have in mind --

25 MR. COHEN: What Mr. Lin was alleged to have said when

D4OVLIN3

1 he came into the room with Little Beijing, which is really the  
2 crucial issue I see in this case.

3 And I think it's essential that the jury understand  
4 that what's been said in the past is not offered for its truth,  
5 but only as to assess the credibility of the witness.

6 MR. SKINNER: Your Honor, prior inconsistent  
7 statements are not hearsay; they are carved out of the meaning  
8 of Rule 801. I don't think that the proposed instruction is  
9 correct on the law, I think it's confusing, and I think it's  
10 unnecessary.

11 THE COURT: I don't think it will help the jury's  
12 deliberations at this stage.

13 Very well. But I will --

14 MR. COHEN: To the extent it's necessary, I'll note my  
15 exception.

16 THE COURT: Of course. I assume that anything I do  
17 not grant -- any request I do not grant you except to.

18 MR. SKINNER: Your Honor, we're excused until 2:30 for  
19 lunch, just so I know what time to be back?

20 THE COURT: 2:30.

21 MR. SKINNER: Thank you, your Honor.

22 THE COURT: But just let's agree on the language I'm  
23 sending the jury.

24 MR. SKINNER: Thank you.

25 THE COURT: Actually, I don't think it's appropriate



D4OVLIN3

1 for me to send anything to the jury. It is the jury's  
2 recollection that governs. And if they think there was any  
3 such thing here, they can consider it. And if they don't think  
4 so, they will not consider it.

5 MR. SKINNER: Okay, your Honor.

6 THE COURT: Very well.

7 MR. SKINNER: Trying to avoid confusion, but --

8 THE COURT: I understand. I would like to avoid  
9 confusion always, but I don't want to create confusion.

10 MR. SKINNER: I mean I think in the charge it says  
11 "you've heard this," so that might create some confusion,  
12 because it's coming from the Court.

13 THE COURT: You have heard what?

14 MR. SKINNER: It says: "You have heard testimony of  
15 witnesses who have been made promises by the government."

16 So I think it's a little confusing, because then they  
17 wonder, Well, which witnesses received those informal -- I  
18 guess it says informal.

19 THE COURT: Excuse me?

20 MR. SKINNER: Your Honor, I take back what I was just  
21 saying. I understand the Court's ruling.

22 THE COURT: Very well. Because I don't think it says  
23 exactly what you think, but that's --

24 MR. SKINNER: No, I was just rereading it myself, and  
25 I think I agree with what you're saying.

D4OVLIN3

1 (At 1:30 p.m., a note was received from the jury)

2 THE COURT: Yes, you discovered it didn't say that.

3 Fine.

4 THE COURT: I have just received a note from the jury  
5 which I will mark exhibit Court Exhibit 2, which reads as  
6 follows:

7 We, the jury, request all exhibits received into  
8 evidence (both gov. and defense).

9 We also request a list of witness names as they  
10 appeared. I can't read this word. Is this "here"? As they  
11 appeared here in court for direct examination.

12 MR. COHEN: Does anybody have a view on whether  
13 nicknames should be included, since I referred to them all, for  
14 simplicity during my summation, by their nicknames?

15 MS. BURNS: I think that probably makes sense, as I  
16 did the same with a couple of the witnesses.

17 THE COURT: Fine.

18 MS. BURNS: They actually acknowledged --

19 THE COURT: Where they gave it, the nickname, sure.

20 MS. BURNS: Right.

21 THE COURT: That's fine.

22 Anthony, we're going to mark this Court Exhibit 2.

23 (Luncheon recess)  
24  
25

D406LIN4

## A F T E R N O O N      S E S S I O N

3:00

THE COURT: I have given you a note that I received from the jury. Have you both read it?

MS. BURNS: We have.

MR. COHEN: We have read two notes, your Honor.

THE COURT: Yes. Thank you. One of them is much easier than the other.

MR. COHEN: Yes, indeed.

THE COURT: Now, what are the police reports that we're talking about? Is any of this in evidence?

MR. COHEN: I don't believe so.

THE COURT: I didn't think so. I thought it was brought out for refreshing recollection.

MS. BURNS: I think the note indicates they have the stipulation that refers to those reports and the times that they were taken. You see the times are reflected in the note. They may think they are in evidence, but they are not. We don't have a disagreement.

MR. COHEN: There is one police report that is in evidence.

THE COURT: What is that?

MR. COHEN: It was of the shooting and stabbing on Division Street. That is in evidence.

MS. BURNS: That is the defendant's police report.

D406LIN4

1 They are asking for the statements of the eyewitnesses.

2 THE COURT: How do you know?

3 MS. BURNS: They lists.

4 THE COURT: Yes, you are right. Those are all the  
5 statements of witnesses?

6 MS. BURNS: That's right. They were the three  
7 individuals.

8 THE COURT: Who went to the police station?

9 MS. BURNS: That's right.

10 THE COURT: Those are not in evidence?

11 MS. BURNS: They are not.

12 MR. COHEN: Can I confer with Mr. Daniels for a  
13 moment?

14 THE COURT: Sure.

15 (Pause)

16 THE COURT: The next thing we have is can the victim  
17 of an extortion be a coconspirator to the same extortion?

18 Does either of you have any idea what this means?

19 MS. BURNS: The only extortion that is charged is the  
20 extortion of the bus company owners. The bus company owners  
21 they heard about are both Chen Quo Guang or and Yi Qun, the  
22 murder victim. So from the note I don't really know which or  
23 both of them they are asking about. I didn't think there is  
24 any evidence that either of them was a coconspirator. I think  
25 they were both --

D406LIN4

1 THE COURT: To the same extortion.

2 MS. BURNS: Right. It's the only extortion at issue  
3 in the case.

4 THE COURT: There certainly was testimony that  
5 initially somebody went to Mr. Lin and asked for his help in  
6 calling off somebody's effort.

7 MS. BURNS: Efforts to compete in the company. That  
8 was Chen.

9 MR. COHEN: That is what I thought it was a reference  
10 to.

11 THE COURT: Right. But when was Chen a victim?

12 MS. BURNS: Our argument is he was subsequently  
13 extorted by the defendant when the defendant asked for  
14 additional shares in the company.

15 THE COURT: You call that extortion?

16 MS. BURNS: That's our extortion count.

17 MR. COHEN: Judge, I think there may be a stipulation  
18 that was received in evidence that did not go into the jury  
19 room. I am trying to find it.

20 THE DEPUTY CLERK: No. It went in.

21 MR. COHEN: I am sorry. I saw the one for Ng and  
22 Varian. I didn't see the one for Ming Li. It was a government  
23 exhibit. It was Government Exhibit 110.

24 THE DEPUTY CLERK: It's in there believe me.

25 MR. COHEN: Okay. Attached to it was Government

D406LIN4

1 Exhibit 34.

2 THE DEPUTY CLERK: Yes. Those are in evidence. They  
3 all went inside.

4 THE COURT: How would that be the same extortion  
5 anyhow?

6 MR. COHEN: Judge, that was the only thing I could  
7 think of in trying to think like a layman about what they might  
8 be talking about and who among the players might be considered  
9 a coconspirator in an extortion was that if the jury thought  
10 that Mr. Lin and Chen, the government's alleged extortion  
11 victim agreed to somehow use force to keep the other guy out of  
12 the business, the competitor, that is that they are referring  
13 to.

14 MS. BURNS: The note is very unclear.

15 MR. COHEN: I don't know how to answer the question.  
16 Maybe your Honor can ask the jury to be more specific and to  
17 clarify exactly what it is that they want. That would be my  
18 request.

19 THE COURT: Who is the victim of the extortion  
20 supposed to be according to the government?

21 MS. BURNS: Chen and Yi Qun, or his legal name is  
22 Zhou, the victim of the murder.

23 THE COURT: I am not talking about the murder.

24 MS. BURNS: Right. But both of them were part of the  
25 same bus company that was extorted and the charge and the

D406LIN4

1 indictment both read that in their to wit clause that the  
2 people extorted were the owners of a bus company and those are  
3 the owners that they have heard about in the course of the  
4 testimony.

5 MR. COHEN: I think in the context of the testimony  
6 the only person they could only be referring to is Chen.

7 THE COURT: I think that's right, but that doesn't  
8 answer the question. I think the closest I can come is can  
9 someone who was helped by the extorter be considered a victim.

10 MR. COHEN: That may be it, Judge, but rather than  
11 speculate, my request is that your Honor ask them to be more  
12 clear.

13 THE COURT: I will. I am going to say I do not  
14 understand your question about a coconspirator being a victim.  
15 Please be more specific.

16 MR. COHEN: Thank you.

17 MS. BURNS: Thank you, Judge.

18 MR. COHEN: Your Honor, with respect to the other  
19 note, are you going to tell them that the police reports are  
20 just not in evidence and they cannot see them.

21 THE COURT: Yes. I will read you what I write in a  
22 minute. I just want to send the first one in.

23 MR. COHEN: Sure.

24 THE COURT: Were those police reports brought forth to  
25 refresh recollection?

D406LIN4

1 MR. COHEN: Yes.

2 THE COURT: I am going to say the police reports are  
3 not in evidence. They were only used to refresh recollection.

4 MS. BURNS: Thank you.

5 THE COURT: Very well. I take it you approve of that,  
6 Mr. Cohen.

7 MR. COHEN: Yes.

8 (Recess pending verdict)

9 THE COURT: In the Lin case we now have a response  
10 from the jury. On page 16 of the charge it states "that the  
11 defendant agreed to work with at least one other person in  
12 furtherance of the object charged." In the indictment it  
13 states that the owners of the bus company are the victims. In  
14 this one, Quo Quang Chen was one victim. Can he also be the  
15 other person stated in the charge?

16 MR. SKINNER: Can't be the coconspirator working with.

17 THE COURT: This explains why they say how can he both  
18 be the victim and the coconspirator.

19 MR. COHEN: That supposes I think that the extortion  
20 victim is somebody other than who the government says is it.

21 MR. SKINNER: Not necessarily.

22 THE COURT: No. It says in this case Quo Quang Chen  
23 was one victim. Can he also be the "other person" stated in  
24 the charge? They quote from the charge "that the defendant  
25 agreed to work with at least one other person in furtherance of



D406LIN4

1 the object charged." The defendant agreed to work with him to  
2 get his friend to not extort him.

3 MR. COHEN: I think we both agree the answer is no.

4 MS. BURNS: No.

5 THE COURT: Is Quo Guang Chen an owner of a bus  
6 company?

7 MR. COHEN: Yes.

8 MS. BURNS: He is.

9 MR. COHEN: He is the person that the government  
10 alleges is the extortion victim.

11 THE COURT: I understand.

12 MR. COHEN: He was the owner of a bus company.

13 THE COURT: Well, who is the other person?

14 MR. COHEN: The other person could be the  
15 coconspirators at the park. It could be the person engaged in  
16 the murder in the karaoke room with the defendant on his  
17 orders. I think we should probably just instruct them, No, you  
18 must find that the defendant worked with someone other than Quo  
19 Quang Chen in furtherance of the extortion to be an extortion  
20 conspiracy.

21 THE COURT: How can they?

22 MR. COHEN: There is none.

23 MR. SKINNER: There is.

24 THE COURT: What is the evidence?

25 MR. SKINNER: There were two followers in the Corona

D406LIN4

1 Park, Queens that met with the defendant when the defendant  
2 threatened the victim, Quo Guang Chen and one of them touched  
3 his side gesturing to the gun.

4 THE COURT: There is no basis that the jury could find  
5 that the --

6 MR. SKINNER: I am not saying that is the same person.  
7 I am saying someone he worked with.

8 MR. COHEN: Judge, I think the simplest, most direct  
9 and least prejudicial answer is to simply say no. The question  
10 calls for a yes or no answer. I think the answer is no.

11 THE COURT: All right.

12 MR. COHEN: Judge, I will note for the record that for  
13 all the notes that have come up to now, I would waive Mr. Lin's  
14 presence and I will decide on a note by note basis.

15 THE COURT: He has to waive his appearance.

16 MR. COHEN: I will consult with him.

17 THE COURT: Go ahead. He is right inside here.

18 (Pause)

19 THE COURT: This is what I propose to writing.

20 You talked to Mr. Lin?

21 MR. COHEN: I did.

22 THE COURT: What did he say?

23 MR. COHEN: He said that he is very satisfied to have  
24 waived his presence for the notes that have been discussed up  
25 until now, but he would like to be present for any future notes

D406LIN4

1 that come out.

2 THE COURT: Very well. What I propose to tell the  
3 jury is a person cannot be both a coconspirator and a victim of  
4 an extortion. I was just reading the response.

5 MS. BURNS: That sounds good. Thank you, your Honor.

6 (Pause)

7 THE COURT: Request for testimony read back.

8 MR. COHEN: I am sorry, Judge?

9 THE COURT: I was going to read a new note that I just  
10 received, request for testimony read back. Quo Guang Chen's  
11 discussion on direct examination regarding a phone conversation  
12 with the defendant when Mr. Chen stated that he would not pay  
13 \$2,000 to the defendant. We request to know his -- in regard  
14 to this entire phone call and related cross-examination. To  
15 know his testimony in regard.

16 Also, is Quo Guang Chen's testimony regarding the  
17 phone call with the defendant after the murder.

18 Do we have the transcript?

19 MR. SKINNER: I can find the direct testimony. I am  
20 not sure if Mr. Cohen crossed him on this or not. I will have  
21 to look it up, Judge.

22 THE COURT: The question clearly they have a pretty  
23 good recollection what happened, but I think they actually  
24 combined two things together. The phone called concerned a  
25 request for an additional 10 percent of the company and then it

D406LIN4

1 was the following day at the meeting in Corona Park, Queens  
2 when he actually then agreed to give him \$2,000.

3 Should we pull the testimony just for the phone call  
4 or both?

5 MR. COHEN: I think the jury should get what it asks  
6 for.

7 THE COURT: Yes. Testimony read back of Quo Guang  
8 Chen's discussion on direct examination regarding a  
9 conversation with the defendant. I can't read the middle word.  
10 Mr. Chen's stated that he would not pay \$2,000 to the  
11 defendant. We request to hear his testimony in regard to this  
12 entire phone call and the related cross-examination.

13 Also, Quo Guang Chen's testimony regarding the phone  
14 call with the defendant after the murder.

15 MR. SKINNER: The testimony with regard to the phone  
16 call starts on page 322 at line 8 and it includes a rough time  
17 frame, which I think should answer the jury's question whether  
18 it was before or after the murder.

19 THE COURT: All right.

20 MR. SKINNER: Your Honor, how do you do read backs?

21 THE COURT: I am going to bring them into the  
22 courtroom.

23 MR. SKINNER: Do you want to us prepare the  
24 transcripts, or do you have the court reporter read it back  
25 omitting the objections? Logistically I have never done it

D406LIN4

1 before.

2 THE COURT: I see. It works in different ways. I can  
3 just take a page of the transcript and expurgate everything  
4 that doesn't apply to it. That is one way of doing it.

5 MR. SKINNER: Probably the easiest.

6 THE COURT: On a discreet matter it is probably the  
7 easiest.

8 MR. SKINNER: We'll give you the pages and line  
9 numbers that apply.

10 THE COURT: If you hand it up, I will know. We'll  
11 make a copy.

12 MS. BURNS: Your Honor, may we see the note recording  
13 the two phone calls?

14 THE COURT: Yes, of course.

15 MS. BURNS: Thank you.

16 MR. COHEN: I have it on my lap top. What page?

17 MR. SKINNER: They are talking about the phone call at  
18 339.

19 Are you going to read it or the reporter?

20 THE COURT: We're going to send it in.

21 MR. COHEN: With redactions and objections and things?

22 THE COURT: Of course.

23 MR. SKINNER: Let's agree on the page numbers and page  
24 number.

25 THE COURT: That's fine.

D406LIN4

1 (Recess pending verdict)

2 MR. COHEN: We're going to go down to the command  
3 center, agree on the transcript.

4 MR. SKINNER: We agreed on the applicable pages and  
5 lines.

6 THE COURT: That's fine.

7 MR. COHEN: I don't want to be responsible for it so I  
8 am going to hand the note and envelope that it came in back to  
9 the clerk.

10 THE COURT: Absolutely. You should do that.

11 (Recess pending verdict)

12 THE COURT: I have received another note from the  
13 jury. This is a very actively writing jury. Request for  
14 testimony to read back Huo Guang Chen's testimony from the  
15 Corona Park incident. There were several times this was  
16 mentioned. We request all the testimony.

17 Mr. Burns, have you heard the note?

18 MS. BURNS: I have.

19 THE COURT: I wasn't looking in that direction.

20 MR. SKINNER: We heard it. We will gather that.

21 MS. BURNS: We have the other testimony ready.

22 THE COURT: That has been agreed to?

23 MR. COHEN: Yes, your Honor. We agreed to what is  
24 here. I've looked at the redactions. I have approved them and  
25 we're ready to send them in when you are.

D406LIN4

1 THE COURT: Very well. We'll give them to  
2 Mr. Daniels.

3 MR. SKINNER: We'll get to work on the next one.

4 THE COURT: If you would like to read it, you are  
5 welcome to. We're mark it Court Exhibit 11.

6 (Recess pending verdict)

7 THE COURT: We have one more jury note, which I would  
8 like to answer in the affirmative. Can we go home now? Can we  
9 have the room open at 9:00 a.m. tomorrow? I have ascertained  
10 that both Mr. Daniels and the marshal will be available at 9:00  
11 tomorrow morning.

12 MR. SKINNER: We will as well, your Honor.

13 THE COURT: We will continue deliberations to tell  
14 them that.

15 MR. COHEN: I don't want to be heard, Judge.

16 THE COURT: They are going to continue their  
17 deliberations.

18 MR. COHEN: Do you want us here at 9:00 as well?

19 THE COURT: I think you have to be.

20 MR. COHEN: Can the marshals have my client here?

21 MR. SKINNER: We can order him for 9:00. I am not  
22 sure what time they can produce him, but we'll order him at  
23 9:00.

24 THE COURT: Let's get the jury in and let's let them  
25 go home.

D406LIN4

1 (In open court; jury present)

2 THE COURT: Members of the jury, the answer to the  
3 question "Can we go home now" is yes and indeed you should be  
4 here to continue your deliberations at 9:00 tomorrow morning.  
5 But I should tell you that all of you have to be here in order  
6 to deliberate, which means that you may not begin your  
7 deliberations until everybody is in the jury room. That means  
8 that you all are responsible to each other to get here at 9:00  
9 in the morning for a follow-up question on that.

10 UNIDENTIFIED JUROR: Can some of us come early, they  
11 would spend more time reading the indictment and charge.

12 THE COURT: I don't know if anybody is going to be  
13 here to guard the room.

14 UNIDENTIFIED JUROR: I mean at 9:00 in the morning as  
15 opposed to beginning deliberations.

16 THE COURT: I see. Once you all gather, you can agree  
17 on whatever procedure you want to agree on in terms of how you  
18 are going to deliberate; but you should not hold up the whole  
19 group. If one of you has a question, you should present it to  
20 the group and there is no reason why the group cannot look at  
21 whatever it is that you have in there at the time that the  
22 issue arises. But you shouldn't all be working on different  
23 things. You should be concentrating on the verdict form and  
24 taking it in sequence because that is the way you will have a  
25 more orderly deliberation and a more likely to complete your



D406LIN4

1 deliberation in an efficient fashion. Thank you all for your  
2 conscientious performance of a very important civic duty and  
3 you will continue again at 9:00 tomorrow morning. Have a  
4 pleasant evening.

5 (Jury excused)

6 THE COURT: Anything further?

7 MR. COHEN: Not from the defendant.

8 THE COURT: You are all excused.

9 (Adjourned to April 25th at 9:00 a.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25